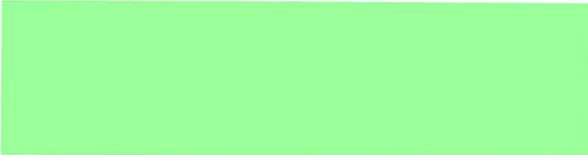


(b)(6)



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



Date: **FEB 25 2013** Office: **BANGKOK, THAILAND** FILE:

IN RE: Applicant:

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg, Acting Chief
Administrative Appeals Office

DISCUSSION: The District Director, Bangkok, Thailand, denied the application for permission to reapply for admission into the United States, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the District Director for further action.

The record reflects the applicant is a native and citizen of Bangladesh who was found to be inadmissible to the United States under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), for having been ordered removed from the United States and seeking admission within the proscribed period since the date of removal. The applicant, through counsel, does not contest this finding of inadmissibility. Rather, he seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside with his wife and children in the United States.

Section 212(a)(9) of the Act provides, in relevant part:

(A) Certain aliens previously removed.-

...

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

....

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

The record establishes the applicant entered the United States without inspection about June 17, 2000, and was placed in removal proceedings on September 7, 2000, upon presenting himself to U.S. immigration officials. On December 5, 2001, the Immigration Judge ordered the applicant removed *in absentia* from the United States, and denied the applicant's subsequent motions to reopen his removal

proceedings. The applicant filed an appeal to the Board of Immigration Appeals (the BIA), and the BIA dismissed the applicant's appeal on October 20, 2005. The applicant then filed an appeal with the U.S. Third Circuit Court of Appeals, which denied his petition for review on April 13, 2007. On June 10, 2008, the applicant was removed from the United States, and has remained outside the United States to date. On July 5, 2010, the U.S. Citizenship and Immigration Services (USCIS) received his Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). Thereby, the AAO finds the applicant is inadmissible under section 212(a)(9)(A)(ii)(I) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

In a separate decision, the AAO has determined the applicant may be subject to the inadmissibility provision of section 212(a)(6)(B) of the Act for failing to attend his hearing on December 5, 2001¹, and remanded the applicant's appeal to the District Director for a determination on the applicant's inadmissibility under section 212(a)(6)(B) of the Act. Accordingly, any new decision of the District Director also shall address the Form I-212 application. If the applicant is found to be inadmissible under section 212(a)(6)(B) of the Act, a new decision on the application for permission to reapply for admission shall be rendered denying the application, as no purpose would be served in granting an application for permission to reapply for admission to an applicant who has a ground of inadmissibility that cannot be waived.² If the application is denied for this reason, no further action will be required of the AAO. If, however, the applicant is not found to be inadmissible under section 212(a)(6)(B) of the Act, the matter shall be returned to the AAO in order to adjudicate the present appeal.

ORDER: The appeal is remanded as discussed above.

¹ Section 212(a)(6)(B) of the Act states:

Failure to attend removal proceeding. -Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

² *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.