



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



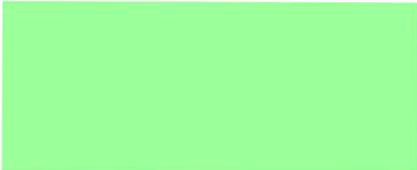
DATE: **FEB 25 2013** OFFICE: VIENNA, AUSTRIA

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:

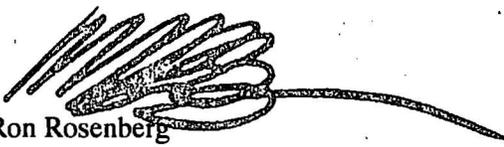


**INSTRUCTIONS:**

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 in accordance with the instructions on 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 Field Office Director, Vienna, Austria, denied the application for permission to reapply for admission into the United States. The applicant, through counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. On December 4, 2012, counsel filed a motion to reopen the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be granted. The previous decision of the AAO will be affirmed.

The record reflects that the applicant is a native of the Socialist Federal Republic of Yugoslavia and citizen of Montenegro who was found to be inadmissible to the United States pursuant to 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 Field Office Director concluded the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative, and denied his Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) accordingly. The AAO affirmed the Field Office Director's decision on appeal.

On motion, counsel contends that upon reopening and granting the applicant's Form I-601 waiver application, the AAO should reopen and grant his Form I-212 application for permission to reapply for admission into the United States as it was denied on appeal, in the exercise of discretion, because the Form I-601 was not approved.

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 reflects the applicant was placed in removal proceedings upon asserting an asylum claim when he attempted to procure admission to the United States on April 26, 2000 by presenting a Republic of Slovenia passport that did not belong to him. On June 21, 2001, the Immigration Judge issued an order, denying the applicant's applications for asylum and for withholding of removal as well as his request for relief under the Convention Against Torture.<sup>1</sup> On August 12, 2004, the applicant was removed to Montenegro, where he has remained to date. On June 21, 2010, the U.S. Citizenship and Immigration Services (USCIS) received his 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.

*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. As the applicant is inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act and no waiver has been approved, no purpose would be served in granting the applicant's Form I-212.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish he is eligible for the benefit being sought. After a careful review of the record, it is concluded the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the motion will be granted and the previous decision of the AAO will be affirmed.

**ORDER:** The motion is granted. The previous decision of the AAO is affirmed. The application remains denied.

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<sup>1</sup> The record reflects the applicant reserved an appeal with the Board of Immigration Appeals (BIA), but did not file an appeal.