



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JAN 07 2013

OFFICE: NEW YORK, NY

FILE: [REDACTED]

IN RE: [REDACTED]

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

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 Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1182(a)(9)(A)(i), as an arriving alien who has been ordered removed. The applicant 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 remain in the United States with his U.S. citizen spouse.

It is noted that the applicant is also inadmissible under section 212(a)(6)(C)(ii)(I) of the Act, 8 U.S.C. §1182(a)(6)(C)(ii)(I), for attempting to procure admission into the United States by fraud or willfully misrepresenting a material fact. The director denied the applicant's Form I-601 waiver of grounds of inadmissibility application on July 10, 2009, and an appeal of the decision has been dismissed by the AAO in a separate decision.

In a decision dated July 10, 2009, the director denied the applicant's Form I-212, finding that the applicant had failed to establish positive factors outweighed the negative factors in his case or that he merited a favorable exercise of discretion.

Counsel indicates on appeal that the director abused her discretion in the applicant's case, by improperly considering, as negative factors, facts relating to the applicant's asylum claim and a prior marriage-based petition.

In support of these assertions, counsel submits affidavits from the applicant and his wife, medical evidence, financial and academic information, photographs and country-conditions reports. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(A) of the Act provides in pertinent part:

(i) Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years 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 [Secretary] has consented to the alien's reapplying for admission.

The record reflects that the applicant was ordered excluded and removed on February 4, 1993, and an appeal to the Board of Immigration Appeals was summarily dismissed on January 26, 1995. Accordingly, the applicant is inadmissible under section 212(a)(9)(A)(i) of the Act. Counsel does not contest the applicant's inadmissibility under section 212(a)(9)(A)(i) 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 properly denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, as no purpose would be served in granting the application.

The record reflects the applicant is also inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission into the United States by fraud or willfully misrepresenting a material fact. The director denied the applicant's Form I-601 waiver application on July 10, 2009, and an appeal has been dismissed by the AAO. As no waiver is available to the applicant, no purpose would be served in the favorable exercise of discretion in adjudicating his application for permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.