



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JUL 09 2013**

Office: BALTIMORE, MARYLAND

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

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 application for permission to reapply for admission after removal was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of El Salvador who first entered the United States without inspection on November 1, 1987. Her request for asylum in the United States was denied by an immigration judge on May 23, 1988; she was granted voluntary departure. The applicant appealed this decision to the Board of Immigration Appeals (BIA); her case was “continued indefinitely without further Board action,” because the applicant was eligible to apply for Temporary Protected Status (TPS) and could exercise her rights under the *American Baptist Churches (ABC)* settlement agreement. The BIA noted that if any party desired further action by the BIA, “a written request to reinstate these proceedings may be made” directly to the BIA. On or about April 11, 1991, the applicant applied for TPS. She applied for lawful permanent resident status in 1995. Her application was approved at that time.

The applicant departed the United States on or about March 31, 1996; she was last admitted as a returning permanent resident in April 2000. While adjudicating the applicant’s application for naturalization in 2002, the District Director determined that the applicant had not established that she was lawfully admitted as a permanent resident. Additionally, he found that because her departure from the United States constituted an automatic withdrawal of her appeal to the BIA, she was considered to be self-removed from the United States. On October 7, 2004, the applicant filed Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), in order to remain in the United States with her U.S. citizen spouse and children.

The District Director determined that that the applicant failed to establish that a favorable exercise of the Secretary’s discretion is warranted and denied the Form I-212 accordingly. *Decision of the District Director*, dated December 21, 2011.

On appeal the applicant, through counsel, states that the District Director’s decision was “erroneous factually and as a matter of law” and that the applicant was unaware she had a “problem with [her] residency.” She also contests the District Director’s finding of inadmissibility, asserting through counsel that she did not willfully misrepresent a material fact concerning her immigration proceedings, which had been administratively closed, when she applied for lawful permanent resident status and citizenship.¹ Additionally, the applicant asserts that she is a person of good moral character. *Form I-290B, Notice of Appeal or Motion*, filed January 20, 2012 (Form I-290B).²

¹ The applicant also filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) in 2004, after becoming aware of this inadmissibility finding. The appeal of the District Director’s Form I-601 denial decision is addressed in a separate AAO decision.

² The Form I-290B indicates that counsel would submit a brief or additional evidence to the AAO within 30 days. However, no brief or additional evidence was received by the AAO, thus the record is considered complete as of the date of this decision.

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

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- 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 five 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.
- (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
 - (II) departed the United States while an order of removal was outstanding, 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 Secretary has consented to the alien's reapplying for admission.

In a separate decision on the applicant's Form I-601, the AAO found that the applicant was not inadmissible under section 212(a)(6)(C) of the Act for having procured a benefit under the Act through misrepresentation. As noted in the decision on the Form I-601, whether the applicant remains in lawful permanent resident status is unclear. Once that determination is made, the issue of whether she requires a Form I-212 will need to be addressed. As the current Form I-212 has no underlying Form I-485, if the applicant is not found to be a lawful permanent resident, no purpose would be served in adjudicating this application and therefore the appeal must be dismissed.

ORDER: The appeal is dismissed.