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

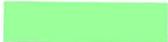


U.S. Citizenship  
and Immigration  
Services



Date: **JUN 04 2013**

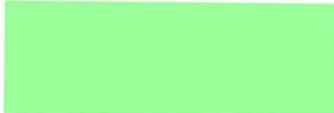
Office: PANAMA CITY

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)

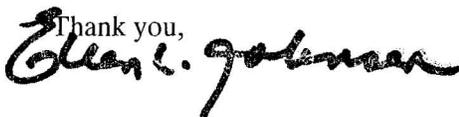
ON BEHALF OF APPLICANT:



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. 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 into the United States after Deportation or Removal (Form I-212) was denied by the Field Office Director, Panama City, Panama. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects the applicant is a native and citizen of Colombia who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit, and section 212(a)(9)(A) of the Act as an alien who has been previously removed. The applicant is married to a U.S. citizen and is the son of a lawful permanent resident. The applicant seeks permission to re-enter the United States in order to reside with his wife, child, and mother.

The field office director found that because the applicant's waiver application was denied, granting the Form I-212 would not serve any purpose. The field office director denied the application accordingly.

On appeal, counsel contends that the waiver application was erroneously denied and is now on appeal. Counsel requests that when the waiver application is approved, the Form I-212 should be approved as well.

Section 212(a)(9) of the Act provides:

(A) *Certain aliens previously removed.*

(i) *Arriving aliens.* Any alien who has been ordered removed under section [235(b)(1) of the Act] . . . 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 Attorney General has consented to the alien's reapplying for admission.

In a separate decision, the field office director denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601), which the applicant filed in relation to his inadmissibility under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit, and section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully

present in the United States for more than one year. The AAO has dismissed the applicant's appeal of that decision.

*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 that no purpose would be served in granting the application. In this case, the applicant is subject to the provisions of sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act, and was denied a waiver under sections 212(i) and 212(a)(9)(B)(v) of the Act, respectively. The AAO has dismissed the applicant's appeal of that decision. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. In that the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the field office director.

In proceedings for an application for admission, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.