



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: MAR 08 2013

Office:

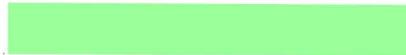
LIMA, PERU

FILE



IN RE:

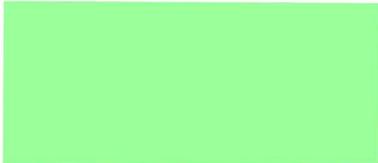
Applicant:



APPLICATION:

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

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 Deportation or Removal (Form I-212) was denied by the Field Office Director, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Brazil who was found inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for being ordered removed from the United States. He now 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 in the United States with his U.S. citizen fiancée and her daughter.

The Field Office Director determined that the applicant is inadmissible to the United States and after denying the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, she denied the Form I-212 accordingly. *Decision of the Field Office Director*, dated August 3, 2012.

On appeal, the applicant, through counsel, claims that new facts have been presented to show that the applicant is eligible to apply for a waiver and also for the Form I-212. *Form I-290B, Notice of Appeal or Motion*, filed August 24, 2012.

The record includes, but is not limited to, counsel's statement; statements from the applicant, his fiancée, and her family, medical and psychological documents for the applicant's wife and mother-in-law, employment documents for the applicant's wife, divorce and custody documents, country-condition documents on Brazil, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(A) Certain alien 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

(II) departed the United States while an order of removal was outstanding, and 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 aliens 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 aliens' reembarkation at

a place outside the United States or attempt to be admitted from foreign continuous territory, the [Secretary] has consented to the aliens' reapplying for admission.

The record of proceeding reveals that on June 8, 2005, an immigration judge ordered the applicant removed *in absentia* from the United States. On December 7, 2009, the applicant voluntarily departed the United States. As such, the applicant is inadmissible under section 212(a)(6)(B) of the Act, for failing to attend his removal hearing, and section 212(a)(9)(A)(ii)(I) of the Act, for being ordered removed from the United States.

The AAO has, in a separate decision, dismissed the applicant's appeal of the denial of the Form I-601, which the applicant filed in relation to his inadmissibility for unlawful presence under section 212(a)(9)(B)(i)(II) 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.

In that the AAO has determined that the applicant is not eligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act and has dismissed his appeal of the Form I-601 denial, no purpose would be served in considering his application for permission to reapply for admission. Accordingly, the appeal of the Field Office Director's denial of the Form I-212 is dismissed.

**ORDER:** The appeal is dismissed.