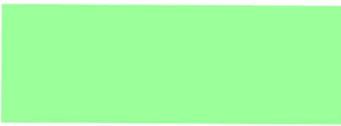




**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **MAR 14 2013**

OFFICE: SACRAMENTO

FILE:

IN RE:

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 Field Office Director, Sacramento, California, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to subsections 212(a)(9)(A) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A) and 1182(a)(6)(C)(i) as an alien previously removed and for having sought to procure admission to the United States by willful misrepresentation. The applicant is the spouse of a U.S. citizen. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act in order to remain in the United States with her U.S. citizen husband.

Section 212(a)(9)(A) of the Act states:

Aliens previously removed.-

(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 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

In the present case, U.S. Citizenship and Immigration Services (USCIS) records show that the applicant claimed to have first entered the United States without inspection on October 2, 1992. The applicant applied for Form I-589, Request for Asylum in the United States using a false name and was later referred to an Immigration Judge on December 7, 1999. *Form I-589, Request for Asylum*, signed by the applicant on November 30, 1992. The applicant failed to appear for her hearing during proceedings and was order removed *in absentia* on October 7, 2003 under her false name. The Immigration Judge denied the applicant's motion to reopen on November 4, 2003 and the applicant did not file an appeal.

The applicant subsequently left the United States and returned on November 6, 2004 when she was paroled in to the United States to resume her application for adjustment of status. The applicant is therefore inadmissible under section 212(a)(9)(A)(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 when 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, no purpose would be served in granting the application. In this case, the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure admission to the United States by willful misrepresentation. Her application for a waiver of that inadmissibility (Form I-601) was denied and her appeal has been dismissed. Accordingly, no purpose would be served in granting the applicant's Form I-212.

In these proceedings, 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.

ORDER: The appeal is dismissed.