



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 10 2013** OFFICE: LIMA 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 with the field office or service center that originally decided your case by filing a 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, Lima, Peru, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), and the matter is now on appeal with the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a native and citizen of Peru who was ordered removed from the United States and was found to be inadmissible under Immigration and Nationality Act (the Act) section 212(a)(9)(A)(ii). The applicant seeks permission to reapply for admission into the United States (Form I-212) under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii). The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States. The applicant's application for a waiver of inadmissibility (Form I-601) for those grounds of inadmissibility is the subject of a separate appeal.

In a decision dated May 21, 2012, the Field Office Director concluded that no purpose would be served in approving the application for permission to reapply due to the applicant's inadmissibility under sections 212(a)(9)(B)(i)(II) and 212(a)(2)(A)(i)(I) of the Act, and the application was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the applicant established that the refusal of his admission would result in extreme hardship to his qualifying relative(s) and, as a result, his application for permission to reapply for admission should have been approved.

In support of the waiver application, the record includes, but is not limited to statements from counsel, a statement from the applicant, a statement from the applicant's father, medical records for the applicant's father, educational and medical records for the applicant's children, financial and employment records for the applicant, letters of support from family and community members, photographs of the applicant and his family, and documentation of the applicant's criminal and immigration history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant was found inadmissible under section 212(a)(9)(A)(ii) of the Act. 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.

...

The record reflects that the Immigration Judge denied the applicant's request for relief from removal and granted the applicant voluntary departure on August 21, 2003. The applicant appealed the Immigration Judge's decision and that appeal was denied by the Board of Immigration Appeals (Board) on May 5, 2005. The applicant filed a motion to reconsider before the Board and that motion was denied on July 22, 2005, making the Immigration Judge's order final and reinstating the period of voluntary departure. The applicant failed to depart and the order of voluntary departure became a removal order irrespective of the applicant's multiple subsequent untimely motions to reopen and appeals of the denials of those motions to the Ninth Circuit Court of Appeals. The applicant's appeals were ultimately denied and the applicant was removed from the United States on October 31, 2009. As a result, the applicant's removal order renders him inadmissible for a period of ten years from the date of his removal from the United States in accordance with section 212(a)(9)(A)(ii) of the Act.

As the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States, and we deny the applicant's appeal of the denial of a Form I-601 waiver application in a separate decision, no purpose would be served in adjudicating the Application for Permission to Reapply for Admission to the United States after Deportation or Removal (Form I-212). 8 C.F.R. § 212.2(e). The Form I-212 was properly denied by the Field Office Director.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish she is eligible for the benefit sought. After a careful review of the record, the AAO finds that the applicant has not met her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.