



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **NOV 22 2013**

Office: PHOENIX

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal pursuant to 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Phoenix, Arizona, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the prior decision of the AAO affirmed.

The applicant is a native and citizen of Italy who was found to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) as an alien who has been ordered removed and who seeks admission within 10 years (or at any time if the alien has been convicted of an aggravated felony) of his removal. The applicant 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 conjunction with his application for a nonimmigrant visa.¹

On January 24, 2012, the Field Office Director denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) concluding that the applicant did not merit a favorable exercise of discretion. The applicant appealed that decision to the AAO and, on July 23, 2013, the AAO dismissed that appeal. The applicant filed a motion to reopen and a motion to reconsider that decision.

On motion, the applicant submits additional evidence concerning his parents' health and his "rehab."

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant was physically removed from the United States on June 14, 2006 and is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act. He requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The negative equities in the applicant's case, as noted in our previous decision are significant. The record illustrates that the applicant is a former lawful permanent resident of the United States who was removed from the United States on June 14, 2006 and lost his lawful permanent resident status pursuant to section 237(a)(2)(B)(i) of the Act, which involves a conviction for a violation of a law relating to a controlled substance. The AAO also notes that the applicant was previously placed in removal proceedings for violating a law relating to a controlled substance and was granted relief by the Immigration Judge on March 30, 1995 pursuant to the now repealed section 212(c) of the Act. The record indicates that the applicant was arrested and convicted of crimes on eight occasions between April 29, 1981 and July 10, 2003 in California, including numerous convictions involving violations of laws pertaining to controlled

¹ An applicant for a non-immigrant visa may seek permission to reapply for admission after deportation or removal through filing Form I-212 in limited circumstances as set forth in 8 C.F.R. § 212.2(b). In most circumstances such permission for non-immigrants is sought pursuant to section 212(d)(3) of the Act. See 8 C.F.R. § 212.2(b).

substances, violations of laws involving fraud and forgery, and a conviction for assault by means of force likely to produce great bodily injury.

The AAO previously found that the applicant did not demonstrate reformation or rehabilitation. On motion, the applicant submitted documentation to show that he does not have a criminal record in the town where he has resided in Italy. The applicant also submitted a translation of a toxicology analysis that states that "the analysis of the blood taken from [the applicant] for review of CDT, more specifically makers of alcohol use has given the result sample [sic] 1 of .54%, therefore lower than the cut off." He also submitted a letter from a childhood friend who is also a pastor stating that the applicant "is sincere person, devoted to his work and his friends and family." In the applicant's father's letter, his father states that the applicant has been rehabilitated and gainfully employed in Italy, but a letter could not be obtained to confirm his employment.

Again, a lack of a recent criminal record, although relevant, does not in and of itself support a finding of rehabilitation in all circumstances, and rehabilitation is not the only factor to consider in this case. The applicant has a history of substance abuse and criminal conduct, and the AAO does not find that the limited evidence submitted establishes the applicant's moral character and rehabilitation. The applicant did not establish how he supports himself and the record contains only one letter from an individual familiar with the applicant's behavior after his removal. That letter is vague as to the applicant's work and lifestyle. The AAO notes the medical conditions of the applicant's elderly parents and they desire to see their son, but the record, taking into account the additional information submitted on motion, does not establish that they are unable to visit the applicant in Italy. The AAO finds that the applicant's significant criminal history and the lack of evidence demonstrating genuine rehabilitation continue to outweigh the positive factors in his case. *Matter of Edwards*, 20 I&N Dec. 191, 195-96 (BIA 1990) (when negative factors become more serious, respondent must introduce additional offsetting favorable equities, which may include unusual or outstanding equities).

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the motion is granted, but the prior decision of the AAO is affirmed.

ORDER: The prior decision of the AAO is affirmed.