



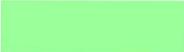
**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **SEP 03 2013**

Office: ATLANTA FIELD OFFICE

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:

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,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Atlanta, Georgia, denied the Application for Permission to Reapply for Admission after Removal the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the field office director will be withdrawn and the application declared unnecessary.

The applicant is a native and citizen of India who was found inadmissible under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking admission within 10 years of his last departure or removal from the United States. In addition, the field office director found the applicant to be inadmissible under section 212(a)(9)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i)(II), as an alien who 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. The applicant 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. The field office director also found the applicant to be inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II).

The field office director concluded that the applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act and did not meet the requirements for consent to reapply because 10 years had not elapsed since the date of the applicant's last departure. The applicant's Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied accordingly. *Decision of the Field Office Director*, dated April 29, 2011.

On appeal the applicant submits documents related to his arrival in India and Kenya. The entire record was reviewed and considered in rendering this decision.

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 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.

(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 Attorney General has consented to the alien's reapplying for admission.

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

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General (Secretary) that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

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

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The record reflects that the applicant entered the United States without inspection at an unknown location in 1995, remaining until his departure in 2006. A Petition for Alien Relative (Form I-130) filed in February 2003 and approved in August 2004 was subsequently revoked due to the dissolution of the applicant's marriage in March 2005. The record establishes that on December 15, 2005, an Immigration Judge granted the applicant voluntary departure until April 14, 2006. The record further reflects that the applicant departed the United States on April 12, 2006, within the period of voluntary departure granted by the Immigration Judge. As the applicant complied with the voluntary departure order he was not ordered removed, the field office director erred in finding him inadmissible under section 212(a)(9)(A) of the Act.

The Field office director also erred in finding the application inadmissible under section 212(a)(9)(C) of the Act, as this ground of inadmissibility applies to individuals who reenter or attempt to reenter the United States without admission after either being ordered removed or accruing one year or more of unlawful presence in the United States. As noted above, the applicant complied with a voluntary departure order and did not depart the United States pursuant to an order of removal. Further, there is no indication he reentered the United States or attempted to reenter without admission after departing in April 2006.¹ The applicant therefore does not require permission to reapply for admission, and the appeal will be dismissed as unnecessary.

ORDER: The appeal is dismissed, the prior decision of the field office director is withdrawn and the Application for Permission to Reapply for Admission after Deportation or Removal will be declared unnecessary.

¹ As the applicant appears to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having accrued unlawful presence of more than one year, he needs to file Form I-601, Application for Waiver of Grounds of Inadmissibility.