

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



(b)(6)

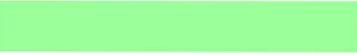


Date: **SEP 25 2013**

Office: DALLAS, TX

FILE: 

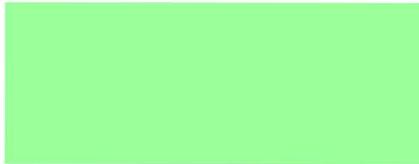
IN RE:

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 (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, Dallas, Texas, 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 sustained.

The record reflects that the applicant is a native and citizen of Jordan who was ordered removed from the United States *in absentia* on September 18, 2003. The applicant 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). She 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 her U.S. citizen spouse and children.

The Field Office Director determined the applicant was also inadmissible under section 212(a)(9)(C) of the Act for having entered the United States after she was ordered removed and denied the Form I-212 accordingly. See *Field Office Director's Decision*, dated March 9, 2013.

On appeal, counsel submits a statement on the Form I-290B, Notice of Appeal or Motion, copies of the applicant's passport, and documentation on the applicant's entries and departures from Jordan. In the Form I-290B statement, counsel asserts the applicant never returned to the United States after her May 12, 2003 departure, and consequently, she is not inadmissible under section 212(a)(9)(C) of the Act. Counsel additionally contends that because the applicant has remained outside the United States since her last departure, she is no longer inadmissible under section 212(a)(9)(A)(ii) of the Act, and the I-212 application is no longer necessary.

The record contains, but is not limited to, the documents listed above, evidence of birth, marriage, divorce, residence, and citizenship, other applications and petitions, documentation of removal proceedings, and correspondence. The entire record was reviewed and considered in rendering a decision on the appeal.

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 Field Office Director found the applicant to be inadmissible under section 212(a)(9)(C)(i)(II) of the Act, as there was some indication that the applicant was present in the United States in 2006 after she was ordered removed on September 18, 2003. Counsel contests this finding, asserting that the applicant has remained outside the United States since her May 2003 departure. The AAO finds the record supports counsel's assertion. The applicant's passport, along with the entry and exit log from the Jordanian government, indicates that the applicant has not made any trips to the United States since her May 2003 departure. Records that the Field Office Director relied on in her decision have been found to be incorrect. As the record reflects the applicant has not re-entered the United States since her May 2003 departure, the AAO concludes, based on the present record, the applicant is not inadmissible under section 212(a)(9)(C) of the Act.

The applicant is also no longer inadmissible under section 212(a)(9)(A) of the Act. Section 212(a)(9)(A)(ii) 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...

The record reflects that the applicant was initially admitted to the United States as a conditional permanent resident on November 12, 1997, based on an approved I-130 petition filed by her ex-spouse, [REDACTED]. The applicant filed a Form I-751, petition to remove the conditions on residence, on or about December 15, 1999. The I-751 petition was denied on April 26, 2002, because the applicant's then-spouse had stated that the applicant entered into the marriage solely for her permanent residence, and that it was a fraudulent marriage. *See termination of conditional resident status*, April 26, 2002. The applicant was consequently served with a Notice to Appear in removal proceedings, and she was ordered removed *in absentia* on September 18, 2003. As stated above, records reflect that the applicant returned to Jordan on or about May 12, 2003, four months before she was ordered removed *in absentia*. The record therefore indicates the applicant has remained outside the United States for 10 years after her May 12, 2003 departure. As such, the applicant is no longer inadmissible under section 212(a)(9)(A)(ii) of the Act, and no longer requires permission to reapply for admission after deportation or removal.

The AAO notes that the applicant may be subject to the provisions of section 204(c) of the Act. Section 204(c) of the Act provides that:

[N]o petition shall be approved if (1) the alien has previously . . . sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General [now Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General [Secretary] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The record indicates that the applicant's ex-spouse, [REDACTED], filed the applicant's first I-130 petition on her behalf. After the I-130 petition was approved, the applicant was granted conditional permanent resident status upon her November 12, 1997 admission to the United States. The record contains letters from [REDACTED] indicating that the applicant married him solely to obtain permanent residence, and that it was a fraudulent marriage. Given this evidence, and without making a specific finding on the matter, the AAO notes the applicant may be subject to the provisions of section 204(c) of the Act. This matter may require additional review before further processing of the applicant's case. With respect to the applicant's I-212 application, however, the AAO finds the applicant is no longer inadmissible under section 212(a)(9)(A)(ii) of the Act, and is also not inadmissible under section 212(a)(9)(C) of the Act.

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 been met.

**ORDER:** The appeal is sustained.