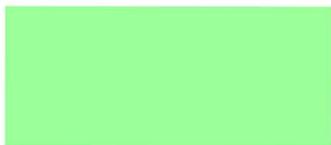




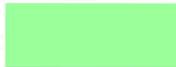
U.S. Citizenship
and Immigration
Services

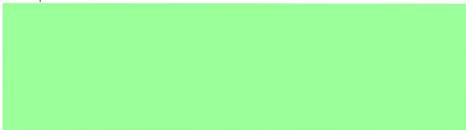
(b)(6)



DATE: **AUG 01 2014**

OFFICE: NEBRASKA SERVICE CENTER

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) 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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the Form I-212, 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 under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), for having been ordered removed from the United States and seeking admission within the proscribed period since the date of 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 order to reside with his U.S. citizen wife, daughter, and son in the United States.

The Director found that because the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied, he would remain inadmissible to the United States even if the applicant's Form I-212 application were approved. The Director denied the Form I-212 as a matter of discretion. *Form I-212 Decision*, dated September 26, 2013.

On appeal, the applicant asserts that it is extremely hard for his spouse to live apart from him due to her depression and high blood pressure, and it also is hard for her to live in India due to her medical condition. *Form I-290B, Notice of Appeal or Motion (Form I-290B)*, dated October 12, 2013.

The record includes, but is not limited to: the applicant's conviction records; affidavits by the applicant and his daughter; letters of support; documents establishing identity and relationships; airline, employment, financial, and medical documents; and a police clearance letter. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(A) Certain aliens previously removed.-

...

(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

...

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 [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission.

The record establishes the applicant was admitted to the United States as a lawful permanent resident on April 18, 2000. On January 9, 2004, the applicant was convicted of two counts of violating 18 U.S.C. 371: Conspiracy to Submit False Asylum Applications and Conspiracy to Obstruct, Influence and Impede Official Proceedings. On April 7, 2004, the immigration judge ordered that the applicant be removed to India pursuant to section 237(a)(2)(A)(iii) of the Act for having been convicted of an aggravated felony. On May 4, 2004, the applicant was removed to India, where he has remained to date. On March 18, 2013, U.S. Citizenship and Immigration Services received his Form I-212. Accordingly, the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act. The applicant does not contest this finding.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that 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, and no purpose would be served in granting the application. As the applicant is statutorily ineligible for a waiver of inadmissibility under section 212(h) of the Act, no purpose would be served in approving the applicant's Form I-212.

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 dismissed.