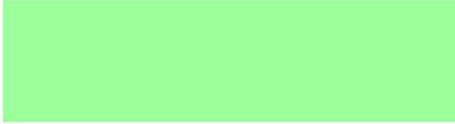




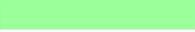
U.S. Citizenship
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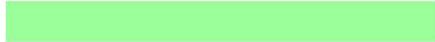
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DATE: **AUG 18 2014**

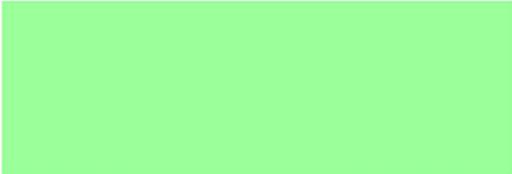
OFFICE: HIALEAH

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.

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, Hialeah, Florida 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 case is remanded to the Field Office Director for further action and consideration.

The record reflects that the applicant is a native and citizen of Jamaica who was found to be inadmissible pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i) for having entered the United States without remaining outside the United States for five years after her removal. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with her spouse.

The Field Office Director determined that the applicant is ineligible to apply for permission to reapply for admission to the United States because she did not remain outside the United States for five years after her removal on August 2, 2002, and did not obtain permission to reapply prior to her reentry to the United States on February 17, 2007. The Field Office Director denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) accordingly. *See Decision of Field Office Director*, dated January 17, 2014.

On appeal, counsel for the applicant asserts that the applicant should be granted *nunc pro tunc* permission to reapply for admission to the United States because it is her only ground of inadmissibility. 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 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 applicant was ordered removed from the United States in section 235(b)(1) proceedings on August 1, 2002 for attempting to enter the United States with a fraudulent stamp in her passport. The applicant was removed from the United States on August 2, 2002. On February 17, 2007, the applicant was admitted to the United States pursuant to an IR1 visa as a spouse of a U.S. citizen. There is no indication that the applicant filed a Form I-212 prior to her entry into the United States or that she remained outside the United States for five years after her removal. Accordingly, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Act for having entered the United States without remaining outside the United States for five years after her removal.

Counsel for the applicant asserts that the applicant, prior to her entry to the United States on February 17, 2007, disclosed that she had been previously removed from the United States and denied admission at a port of entry. Counsel further contends that the applicant is permitted to reapply for admission into the United States after her removal because it is her only ground of deportability or inadmissibility.

The record reflects that on July 6, 2002, the applicant married her U.S. citizen husband, who filed a Form I-130, Petition for Alien Relative, on her behalf, which was approved on June 24, 2004. The applicant filed a Form I-601, Application for Waiver of Ground of Excludability, for presenting a passport with a fraudulent Jamaican immigration stamp in order to conceal her prior overstay, which was approved on June 9, 2006. On March 29, 2006, the applicant submitted a Form DS-230, Application for Immigrant Visa and Alien Registration, indicating that she had been refused admission to the United States at a port of entry and had previously been ordered removed within the last five years. The applicant was issued an IR1 visa, as a spouse of a U.S. citizen, on February 7, 2007 and was admitted to the United States pursuant to this visa on February 17, 2007.

The record supports the applicant's contention that her failure to file a Form I-212 prior to her last entry to the United States was inadvertent and the record reflects that the applicant was forthcoming concerning her expedited removal from the United States on August 2, 2002.

The Field Office Director stated that the regulations addressing retroactive approvals of Form I-212 hold that such retroactive approvals are only available in instances at the port of entry prior to admission and in conjunction with an application for adjustment of status. Under 8 CFR § 212.2(i), an applicant who files Form I-212 when seeking admission at a port of entry shall receive retroactive approval to the date on which the alien embarked or reembarked at a place outside the

United States or the date on which the alien attempted to be admitted from foreign contiguous territory. Further, an alien who files a form I-212 in conjunction with an application for adjustment of status under section 245 shall receive retroactive approval to the date on which the alien embarked or reembarked at a place outside the United States. However, this section of the Code of Federal Regulations does not control the applicant's Form I-212 application, as she is not seeking admission at a port of entry and the form was not filed in conjunction with an adjustment application.

As noted by counsel, the applicant is currently a lawful permanent resident with no other grounds of deportability or inadmissibility. The Board of Immigration Appeals (BIA) has held that *nunc pro tunc* permission to reapply for admission is available in limited circumstances where a grant of such relief would effect a complete disposition of the case, such as where the only ground of inadmissibility would thereby be eliminated. See *Matter of Garcia-Linares*, 21 I&N Dec. 254 (BIA 1996); *Matter of Roman*, 19 I&N Dec. 855, 857 (BIA 1988); *Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). In *Matter of Garcia-Linares*, the BIA stated:

We note initially that there is no provision in the immigration laws that expressly authorizes *nunc pro tunc* permission to reapply for admission to cure an alien's failure to obtain such permission prior to reentry after deportation. However, even prior to the enactment of the Immigration and Nationality Act of 1952 . . . there had long been an administrative practice of granting such relief "in a few well-defined instances." . . . And, in 1954, the Attorney General ruled that there was no reason to reverse this practice following the enactment of the 1952 Act. *Id.* Thus, Immigration Judges and this Board have long considered such requests for "relief." *Matter of Garcia-Linares* at 257 (quoting *Matter of S-N-*, 6 I&N Dec. 73, 76 (BIA, A.G. 1954)).

As the applicant has no other ground of inadmissibility other than the basis for her submission of a Form I-212 and as the regulations do not categorically preclude her from eligibility for retroactive approval of permission to reapply for admission, the applicant warrants consideration whether she qualifies for *nunc pro tunc* permission to reapply for admission consistent with the decisions of the BIA cited above.

Therefore, we remand the Form I-212 to the Field Office Director to reconsider whether the applicant qualifies for *nunc pro tunc* permission to reapply for admission. If that decision is adverse to the applicant, the matter shall be certified for review to the AAO pursuant to 8 C.F.R. § 103.4.

ORDER: The matter is remanded to the Field Office Director for further proceedings consistent with this decision.