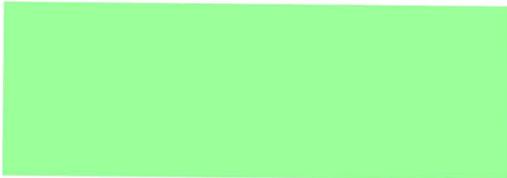




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 27 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)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

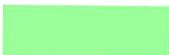
ON BEHALF OF APPLICANT:

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 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Pakistan and citizen of Canada, was admitted to the United States as a lawful permanent resident on May 14, 1979. As a result of numerous criminal convictions the applicant was placed in removal proceedings and ordered removed to Canada on October 22, 1990. On June 8, 1992, the BIA affirmed the immigration judge’s decision to remove the applicant. The applicant departed the United States on August 11, 1997. After entering the United States as a Canadian citizen on December 16, 1997, the applicant was placed in removal proceedings and again ordered removed to Canada on October 16, 1998. On June 10, 2002, the BIA affirmed the immigration judge’s decision to remove the applicant and on October 12, 2004 the Ninth Circuit denied his request for review. The applicant was removed from the United States for a second time on February 24, 2010. In applying for an immigrant visa based on an Alien Relative Petition filed by his spouse, the applicant was found to be inadmissible to the United States under section 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(B), for having been convicted of two or more offenses for which the aggregate sentences to confinement were 5 years or more. The applicant was also found ineligible for a waiver under section 212(h) of the Act because he committed an aggravated felony subsequent to his admission to the United States as a lawful permanent resident. The applicant is also inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) as a result of his aggravated felony conviction and 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 travel to the United States and reside with his U.S. citizen spouse, mother and father.

In a decision, dated November 14, 2013, the director determined that because the applicant was not eligible for a waiver under section 212(h) of the Act because he committed an aggravated felony subsequent to his admission to the United States as a lawful permanent resident, he did not warrant a favorable exercise of discretion. His application for permission to apply for admission was denied accordingly.

On appeal, counsel states that the director erred in its determination regarding the applicant’s eligibility for a waiver pursuant to section 212(a)(9)(A)(iii) of the Act.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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

(II) departed the United States while an order of removal was outstanding, and 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. As stated above, the director found the applicant inadmissible under section 212(a)(2)(B) of the Act and the applicant was found ineligible for a waiver under section 212(h) of the Act because he committed an aggravated felony subsequent to his admission to the United States as a lawful permanent resident. In a separate decision, concerning the applicant's waiver application, we affirmed these determinations.

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.

The applicant is subject to the provisions of section 212(a)(2)(B) and 212(h) of the Act. No waiver is available to an applicant who has committed an aggravated felony subsequent to his admission to the United States as a lawful permanent resident. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed.

ORDER: The appeal is dismissed.