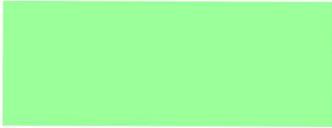


(b)(6)



U.S. Citizenship  
and Immigration  
Services



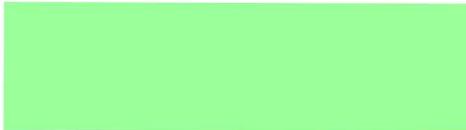
Date: Office: ADMISSIBILITY REVIEW OFFICE

**AUG 28 2014**

FILE:

[REDACTED]  
consolidated therein)

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:

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Admissibility Review Office, 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 dismissed.

The applicant is a native and citizen of Canada who was found inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been removed from the United States pursuant to a removal order and then re-entering the United States without being admitted. He 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).

The Director determined that the applicant was statutorily ineligible to request permission to reapply for admission until 10 years have passed since his last departure date from the United States. He denied the Form I-212 accordingly. *See Decision of the Director*, dated December 16, 2013.

On appeal, the applicant asserts that he lawfully re-entered the United States using his Canadian passport in 2008 and did not unlawfully re-enter on January 7, 2007, as indicated in the Director's decision. The applicant provides evidence on appeal to support his position.

The record includes, but is not limited to: a Form I-290B, Notice of Appeal or Motion; a brief submitted by prior counsel with Form I-212; financial documentation; copies of the applicant's U.S. employment authorization cards; copies of the applicant's Canadian passports and other identification documents; letters from the applicant, his tax consultant, his employers, and his friend; a Form I-485, Application to Register Permanent Residence or Adjust Status; a Form I-130, Petition for Alien Relative; and a Form I-140, Immigrant Petition for Alien Worker, with supporting documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant was ordered deported *in absentia* on January 3, 1996, and was removed on June 18, 2006. According to the Notice of Intent/Decision to Reinstate Prior Order (Form I-871), the applicant subsequently re-entered the United States without inspection, and on December 14, 2010, he signed the Form I-871 that specifies he illegally re-entered the United States on or about January 7, 2007, at or near [REDACTED] Michigan. The applicant signed the form's Acknowledgment and Response box and indicated with a checkmark that he did not wish to make a statement contesting the determination that his removal order would be reinstated. He was removed from the United States on December 14, 2010 and has not returned since.

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 applicant on appeal asserts that he did not re-enter the United States without inspection on January 7, 2007, and therefore section 212(a)(9)(C) of the Act does not apply to him. After his removal on June 18, 2006, the applicant asserts that he re-entered the United States legally with his wife in 2008. He provides paystubs and a letter from his Canadian employer to demonstrate that he was working in Canada in January 2007. In addition, he provides copies of his employment authorization cards, allowing him to work in the United States, to demonstrate that he was not authorized to work in the United States in January 2007. He also provides bank statements to show that he made purchases in Canada in January 2007 and an account statement to show that he went to his dentist in Canada on February 19, 2007.

The photocopied paystubs the applicant provides from his employer in Canada fail to reflect his earnings during January 2007. Specifically, the applicant submits paystubs only for October 2007 and February 2007. This evidence does not prove that he was working in Canada and did not enter the United States unlawfully in January 2007. Further, although his Canadian employer indicates in a letter that the applicant worked for him between April 1997 and January 2008, his statement does not prove that the applicant did not travel to the United States or re-enter unlawfully during this period. Similarly, the applicant provides his bank statements showing that he made purchases in Canada on December 21, 2006 and again on January 15, 2007. The applicant does not establish his presence in Canada on January 7, 2007, with this evidence, because he could have made a trip to the United States during the gap indicated in his purchase history. Alternatively, his wife, who shares the account, could have made the purchases. The applicant also provides an account statement indicating that he visited the dentist on February 19, 2007. Again, this does not establish the applicant's presence in Canada on the date the signed Form I-871 indicates that he unlawfully re-entered the United States. The applicant's evidence, therefore, does not establish he re-entered the United States in 2008 legally instead of illegally on January 7, 2007. Moreover, the record includes a Form G-325C, Biographic Information, the applicant signed on September 3, 2009, that accompanied the Form I-130 his sister filed on his behalf. The applicant lists a Texas post-office box as his residence between July 1994 to September 2009, which appears to contradict the applicant's evidence concerning his residence in Canada. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record reflects that the applicant was removed from the United States on June 18, 2006, and on Form I-871 he acknowledged re-entering the United States without inspection on January 7, 2007. The same re-entry date is indicated on Form I-213, Record of Deportable/Inadmissible Alien. The applicant

was removed from the United States on December 14, 2010, and therefore, has not remained outside the United States for 10 years since his last departure. The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . . ."). As a result of his removal and subsequent re-entry without admission, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i) of the Act.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least 10 years ago, the applicant has remained outside the United States *and* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant was removed from the United States on June 18, 2006, and re-entered the United States without inspection on January 7, 2007. The applicant's last departure from the United States was on December 14, 2010 and therefore, he has not remained outside the United States for 10 years. The applicant is currently statutorily ineligible to apply for permission to reapply for admission. Accordingly, the appeal will be dismissed.

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 not been met.

**ORDER:** The appeal is dismissed.