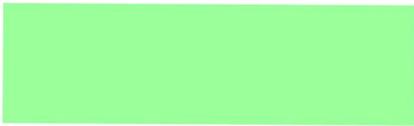




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **DEC 10 2014** OFFICE: HOUSTON 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Houston, 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.¹ The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who submitted a Form I-212 to receive permission to enter the United States after his departure on October 11, 2013, following the issuance of a removal order. 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 his U.S. citizen mother and child.

The Field Office Director concluded that the applicant's form I-485 had been previously denied so that the applicant is not eligible for a Form I-212 application, and denied the application accordingly. *Decision of the Field Office Director*, dated July 14, 2014.

On appeal, counsel for the applicant asserts that no legal reasoning was given for the denial of the applicant's Form I-212 application. The entire record was reviewed and considered in rendering this decision.

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

¹ It is noted that the applicant, on his Form I-290B, Notice of Appeal, indicated his intent to appeal both his Form I-212 and Form I-601 decisions. As these are two separate decisions, though both issued on July 14, 2014, their appeals would require two separate Form I-290B applications. As counsel references the Form I-212 decision in his brief, the Form I-290B will be treated as an appeal of that decision alone.

territory, the Secretary has consented to the alien's reapplying for admission.

The applicant was ordered deported from the United States by an immigration judge on January 8, 1996 and was deported from the United States on September 12, 1997. The applicant subsequently entered the United States without admission or parole sometime in 1998. The applicant is inadmissible under section 212(a)(9)(C)(i)(II) for entering the United States without admission after an order of removal pursuant to section 240 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 ten 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). 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 ten 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's last departure from the United States took place on October 11, 2013. As such, the applicant has remained outside the United States for less than ten years since his last departure. Based upon this ground of inadmissibility, the applicant is currently statutorily ineligible to apply for permission to reapply for admission.

The applicant is also not eligible to apply for permission to reapply for admission into the United States based on the denial of his Form I-485, Application to Register Permanent Residence or Adjust Status. The record indicates that the applicant filed a Form I-485 on October 8, 2013. The applicant was removed from the United States on October 11, 2013 following the reinstatement of his prior removal order.

The departure from the United States of an applicant who is under removal proceedings shall be deemed an abandonment of the adjustment application constituting grounds for termination of the proceeding by reason of departure and the applicant's Form I-485 was denied on this ground. 8 C.F.R. § 245.2(a)(4)(ii). The applicant no longer has an application upon which he can adjust his status in the United States. As such, there is no basis for the applicant to establish eligibility for a Form I-212 application. Because he is currently residing outside the United States, the applicant must apply for an immigrant visa through consular processing. However, as noted above, as he is inadmissible under section 212(a)(9)(C) he is ineligible to file for permission to reapply for admission until he has been outside the United States for 10 years.

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