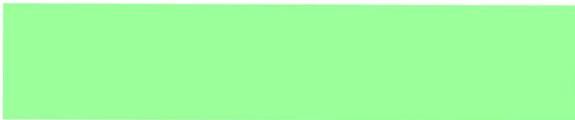




U.S. Citizenship  
and Immigration  
Services

(b)(6)



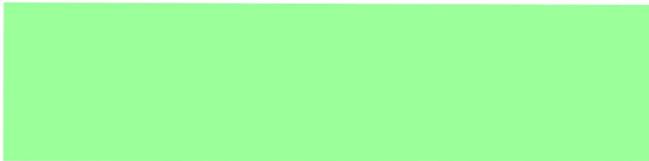
DATE: **DEC 12 2014** Office: NEBRASKA SERVICE CENTER

FILE:

IN RE: Applicant:

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:



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 application for permission to reapply for admission after removal was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States pursuant to 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. 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) in order to reside in the United States with his U.S. citizen spouse.

The Director found that as the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), was denied, the applicant would remain inadmissible to the United States even if his Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212), was granted. *Decision of the Director*, dated June 30, 2014. He denied the Form I-212 accordingly. *Id.*

On appeal, counsel asserts that the Director erred in denying the Form I-212 due to the Form I-601 being denied; the Director should have considered relevant factors as discussed in *Matter of Tin*, 14 I& N Dec. 371 (Reg. Comm. 1973); and the application should be granted. *Brief in Support of Appeal*, dated July 29, 2014.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, a psychological examination of the applicant's spouse, statements from family members of the applicant's spouse, educational records and country-conditions information about Ecuador. The entire record was reviewed and considered in rendering a decision on the appeal.

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

The record reflects that applicant entered the United States with a fraudulent visa in 2000, he was granted voluntary departure on March 30, 2011 with an alternate order of removal; his voluntary departure period ended on July 28, 2011; and he did not depart the United States until March 8, 2012. The applicant's alternate order of removal was put into effect due to his failure to depart pursuant to his voluntary-departure order. The applicant is inadmissible under section 212(a)(9)(A)(ii)(II) of the Act and, therefore, must receive permission to reapply for admission. The applicant does not contest this ground of inadmissibility.

We have, in a separate decision, dismissed the applicant's appeal of the denial of the Form I-601, which the applicant filed in relation to his inadmissibilities for unlawful presence and his Class A medical condition under sections 212(a)(9)(B)(i)(II) and 212(a)(1)(A) of the Act, respectively. In that we have dismissed the applicant's appeal of the Form I-601 denial and the applicant is currently inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(1)(A) of the Act, no purpose would be served in considering his application for permission to reapply for admission. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964). Accordingly, we will not address the factors listed in *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973) and the appeal of the Director's denial of the Form I-212 will be dismissed as a matter of discretion.

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.