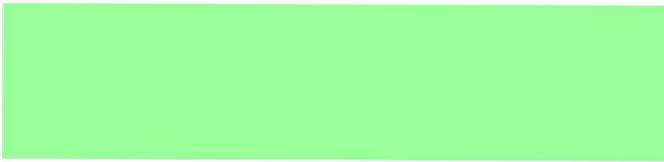


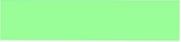
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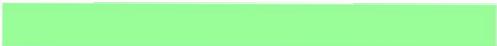
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **DEC 18 2014** Office: CHICAGO 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:

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 application for permission to reapply for admission after removal was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India applicant who was expeditiously removed and is, therefore, inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). The applicant was also found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation and under section 212(a)(7)(A) of the Act, 8 U.S.C. § 1182(a)(7)(A)(i)(1), as an immigrant without a valid visa. The applicant now 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.

The Field Office Director determined that since the applicant was inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, no purpose would be served in adjudicating the applicant's Form I-212. The Field Office Director further noted that even if the applicant was in fact admissible, the unfavorable factors outweighed the favorable ones and a Form I-212 would not be warranted as a matter of discretion. The Form I-212 was denied accordingly. *See Field Office Director's Decision*, dated May 8, 2014.

In support of the appeal the applicant submits a letter and employment documentation. The applicant contends that he is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant maintains that the interview at the port of entry in August 2011 was intimidating and he was forced to sign documents without having a chance to review them. He maintains that his employment in the United States was genuine and valid, that he never worked without authorization while in the United States, and that the purpose of his travel to India was to visit his ailing mother.

The purpose of the Form I-212 application is to request permission to apply for admission after removal. The applicant does not dispute that he was removed in August 2011. Nor does he dispute that he is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act and needs to seek permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant's contention that he did not fraudulently or willfully misrepresent himself when attempting to procure entry to the United States in August 2011 is not an issue that falls within the parameters of the Form I-212 appellate review.

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

(A) Certain alien 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 5 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.

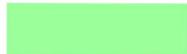
- (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

The record establishes that the applicant was expeditiously removed on August 22, 2011. The applicant is thus inadmissible under section 212(a)(9)(A)(i) of the Act. *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. The record establishes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, and the applicant has not obtained a waiver of this ground of inadmissibility.¹ Accordingly, the appeal of the field office director's denial of the Form I-212 is dismissed as a matter of discretion.

Even if there was a purpose to adjudicating the applicant's request for permission to reapply for admission at this time, the applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones. In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any

¹ The record does not indicate that the applicant is currently eligible to apply for, and obtain, a waiver for fraud or willful misrepresentation because the record does not establish that the applicant currently has any means, nonimmigrant or immigrant, of admission to the United States at this time.



inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

The favorable factors in this matter are the apparent lack of a criminal record, the payment of taxes, and support letters from the applicant's colleagues in the United States. The unfavorable factors are the applicant's attempt to procure entry to the United States in August 2011 by fraud or willful misrepresentation, the applicant's admission on August 21, 2011 to having worked without authorization and the absence of an approved nonimmigrant or immigrant visa petition on his behalf. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones and that a favorable exercise of discretion is warranted.

The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.