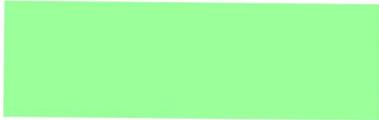


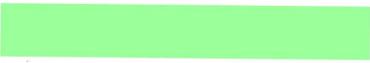
(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: **DEC 23 2014** OFFICE: SAN FRANCISCO 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 (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 Acting Field Office Director, Sacramento, California 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 Pakistan who submitted a Form I-212 to receive permission to enter the United States after his departure on September 29, 2006, 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 spouse and children.

The Acting Field Office Director concluded that the applicant had failed to demonstrate sufficient favorable factors to outweigh the negative factors in his case, and denied the application accordingly. *Decision of the Acting Field Office Director*, dated May 18, 2007.

On appeal, filed on August 8, 2007 and received by this office on May 20, 2014, former counsel for the applicant asserts that the applicant merits a favorable exercise of discretion in his Form I-212 application. Counsel further asserts that based upon the applicant's reliance on the Ninth Circuit Court of Appeals decision in *Perez-Gonzales v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004), the applicant can seek permission to reapply for admission despite his unlawful entry after removal, as he would be eligible for adjustment of status. 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 territory, the Secretary has consented to the alien's reapplying for admission.

The applicant was ordered deported in absentia in section 240 proceedings on August 15, 1995. The applicant subsequently filed a motion to reopen his immigration proceedings, denied by the immigration judge on July 16, 1998. An appeal of the immigration judge's decision, filed with Board of Immigration Appeals, was dismissed on June 5, 2000. The applicant departed from the United States on or about September 29, 2006, self-executing his deportation order, and entered the United States without admission or parole on or about October 6, 2006. 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.

The record reflects that the applicant entered the United States with a student visa on or about October 13, 1991, but failed to attend school, as required by the terms of the visa. Accordingly, the applicant was placed into immigration proceedings, found to be deportable on this basis, and ordered deported on August 15, 1995. As such, the applicant accrued unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions, until his departure on September 29, 2006.¹ The applicant subsequently entered the United States without admission or parole on or about October 6, 2006. Accordingly, the applicant is also inadmissible under section 212(a)(9)(C)(i)(I) for entering the United States without admission after accruing over one year of unlawful presence in the United States.

Aliens who reside within the jurisdiction of the Ninth Circuit Court of Appeals may be eligible for consent to reapply for admission even if they are presently inadmissible under section 212(a)(9)(C)(i)(II) of the Act, if they meet specific requirements under the terms of *Duran-Gonzales v. DHS*, No. C06-1411(W.D. Wash., 2014). Settlement Agreement and Amendment of the Class Definition at 2-3, *Duran Gonzales v. DHS*, No. C06-1411 (W.D. Wash, 2014)(settlement agreement).

The settlement agreement defines a class member as any person who:

1. Is the beneficiary or derivative beneficiary of an immigrant visa petition or labor certification filed on or before April 30, 2001, provided that, if the immigrant visa petition or labor certification was filed after January 14, 1998:
 - a. the beneficiary was physically present in the United States on December 21, 2000, or
 - b. If a derivative beneficiary, the derivative beneficiary or the primary beneficiary was physically present in the United States on December 21, 2000.
2. Is inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act ("INA"), because he or she entered or attempted to reenter the United States without being admitted after April 1, 1997, and without permission after having previously been removed;

¹ The record reflects that the applicant filed a Form I-589, Request for Asylum in the United States, on January 5, 1995. The immigration judge, on August 15, 1995, ordered the applicant deported in absentia and indicated that any pending applications for relief from deportation were deemed abandoned. As such, the applicant's asylum application filing does not affect the determination of the applicant's period of unlawful presence in the United States.

3. Properly filed a Form I-485 (Application to Adjust Status) and Form I-485 Supplement A (Adjustment of Status Under Section 245(i)) while residing within the jurisdiction of the Ninth Circuit on or after August 13, 2004, and on or before November 30, 2007;
4. Filed a Form I-212 (Application for Permission to Reapply for Admission Into the United States After Deportation or Removal) on or after August 13, 2004, and on or before November 30, 2007;
5. Form I-485, Form I-485 Supplement A, and Form I-212 were denied by U.S. Citizenship and Immigration Services (“USCIS”) and/or the Executive Office for Immigration Review (“EOIR”) on or after August 13, 2004, or have not yet been adjudicated;
6. Is not currently subject to pending removal proceedings under INA § 240, or before the United States Court of Appeals for the Ninth Circuit on a petition for review of a removal order resulting from proceedings under INA § 240; and
7. Did not enter or attempt to reenter the United States without being admitted after November 30, 2007.

In this case, the record establishes that the applicant is not eligible for relief under the settlement agreement as the record establishes that he is otherwise inadmissible. The applicant is also inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act, for illegally reentering the United States after having accrued more than one year of unlawful presence. The settlement agreement only pertains to applicants who are inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Based on his inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, he is still subject to the ten year bar in applying for permission to reapply for admission.

As the record does not establish that the applicant has been outside of the United States for a total of ten years since his most recent departure on September 29, 2006, he is currently statutorily ineligible to apply for permission to reapply for admission into the United States after deportation or removal pursuant to section 212(a)(9)(C)(iii) of the Act.² See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); see also *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). The appeal of the denial of his application for permission to reapply for admission pursuant to his inadmissibility under section 212(a)(9)(C)(i)(II) is, therefore, dismissed as a matter of discretion.

ORDER: The appeal is dismissed

² The record establishes that the applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year, as discussed in detail above. The applicant will need to obtain approval of the Form I-601, Application for Waiver of Grounds of Inadmissibility.