



**U.S. Citizenship
and Immigration
Services**

(b)(6)

[REDACTED]
Date: Office: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: **JUL 09 2014** Applicant: [REDACTED]

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:
[REDACTED]

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,

[Handwritten Signature]
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, 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 Guatemala who was found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 and again seeking admission within 10 years of his last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, and under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) for having been ordered removed from the United States and seeking admission within 10 years of the date of departure. The applicant does not contest the findings of inadmissibility but rather seeks permission to reapply for admission into the United States.

The director determined that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I 601) accordingly. The Application for Permission to Reapply for Admission (Form I-212) was also denied as a matter of discretion. *See Decision of the Director* dated October 21, 2013.

On appeal counsel for the applicant contends that the director erred in denying the application for permission to reapply for admission because favorable factors outweigh negative factors. The entire record was reviewed and considered in rendering this decision.

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

The record reflects that the applicant entered the United States without inspection in 1999 and was granted voluntary departure by an immigration judge in 2007. An appeal by the applicant was dismissed by the Board of Immigration Appeals in November 2008, and the applicant was ordered to depart the United States within 30 days of that decision. The applicant then failed to depart the United States in compliance with the decision, the immigration judge's order converted to a removal order, and the applicant was removed in May 2011. The applicant thus accrued unlawful presence of more than one year, making him inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The record also reflects that the applicant was convicted of crimes involving moral turpitude in 2008 and 2011, making him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

In a separate decision, we dismissed an appeal of the denial of the applicant's Form I-601. *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, and no purpose would be served in granting the application. As the applicant is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(2)(A)(i)(I) of the Act and his waiver application has been denied, the appeal of the denial of his application for permission to reapply is dismissed as a matter of discretion, as its approval would not result in the applicant's admissibility to the United States.

ORDER: The appeal is dismissed.