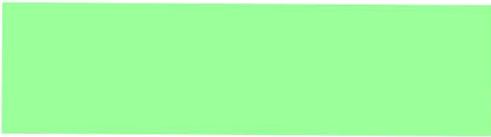


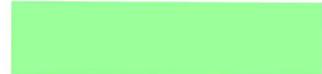


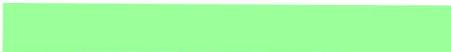
U.S. Citizenship  
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Services

(b)(6)



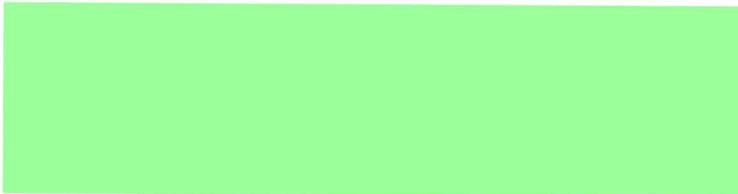
DATE: **MAR 26 2014** OFFICE: NEBRASKA SERVICE CENTER



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,

  
F- Ron Rosenberg

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 record reflects that the applicant is a native and citizen of Albania who was found to be inadmissible pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i) for having sought admission to the United States without remaining outside for five years following her removal. 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).

The Director determined that the applicant is also subject to section 212(a)(9)(C)(i)(II) of the Act and has not remained outside the United States for ten years following her last departure, and denied the applicant's Form I-212 accordingly. *See Decision of Director*, dated July 25, 2013.

On appeal, counsel for the applicant asserts that the applicant departed from the United States voluntarily so that she is not subject to inadmissibility under section 212(a)(9)(C)(i)(II) of the Act. 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 removed from the United States subsequent to her attempt to enter the United States under the Visa Waiver Program with a passport and I-94W belonging to another

individual on July 22, 2000.<sup>1</sup> The applicant was removed from the United States on February 12, 2001. The Director determined that the applicant subsequently entered the United States without admission or parole in August 2001 and found the applicant to also be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act.

Counsel for the applicant asserts that the applicant departed from the United States voluntarily so that she was not subject to removal and not inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act. The applicant was, however, ordered removed by an immigration judge on January 31, 2001 and did not depart under an order of voluntary departure. Counsel further asserts that the applicant's second entry to the United States cannot be considered illegal, as she was "inspected" and "admitted" upon her August 22, 2001 entry from Canada to the United States aboard a passenger train. Counsel contends that the applicant, like the alien in *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010), was admitted to the United States, as her entry was procedurally proper. In *Matter of Quilantan*, it is undisputed that the respondent entered the United States as a car passenger waved through a border crossing by an immigration official. *Id.* Counsel asserts that the applicant was aboard a passenger train that crossed the Canada-United States border. Counsel further asserts that upon stopping, a boarding immigration official asked no questions of the applicant. It is noted that the record does not contain supporting documentation for counsel's assertions concerning the applicant's manner of entry in August 2001. It is also noted that in her Form I-601, the applicant stated that she entered the United States without inspection in August 2001. The applicant also stated, in both her Form I-601 application and a submitted letter, contrary to counsel's assertions, that she entered the United States illegally before the expiration of her removal bar. Accordingly, the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for entering the United States without admission or parole subsequent to removal from the United States.

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

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<sup>1</sup> The AAO notes that the applicant was issued a Form I-862, Notice to Appear, and placed in removal proceedings and was subsequently order removed by an immigration judge on January 31, 2001 after withdrawal of her asylum application. However, as she sought and was denied admission under the Visa Waiver Program, it appears she should have been issued a Form I-863 and placed in asylum-only proceedings before the immigration judge. *See Matter of Kanagasundram*, 22 I&N Dec. 963, 965 (BIA 1999) (holding that, once an immigration officer denies an alien's application for admission into the United States under the visa waiver pilot program, proceedings "must" be commenced with a Notice of Referral to Immigration Judge (Form I-863)).

admission. In the present matter, the applicant departed the United States on February 12, 2001 and contends that she returned to the United States on August 22, 2001. The applicant asserts that she subsequently departed from the United States in May 2010. As such, the applicant has remained outside the United States for less than ten years since her last departure. Based upon this ground of inadmissibility, the applicant is currently statutorily ineligible to apply for permission to reapply for admission.

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