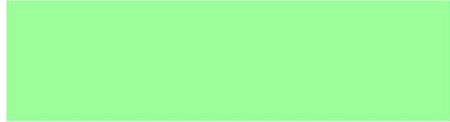




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **OCT 01 2014** OFFICE: LOS ANGELES

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) 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 Field Office Director, Los Angeles, denied the Form I-212, 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 the Republic of China (Taiwan) who is inadmissible to the United States under 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 been ordered removed from the United States and seeking admission within the proscribed period since the date of removal. The applicant, through counsel, 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 with her spouse and child in the United States.

The Field Office Director found that because 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 her Form I-212 application were approved. The Field Office Director denied the Form I-212 as a matter of discretion. *See Form I-212 Decision*, dated February 20, 2014.

On appeal, counsel asserts that the denial of the applicant's waiver application by U.S. Citizenship and Immigration Services (USCIS) was arbitrary and capricious, as: USCIS should have issued a request for evidence for the applicant to cure any evidentiary deficiency; and documentary evidence submitted with the waiver application was sufficient to corroborate the applicant's claims that her qualifying relative would experience extreme hardship if her waiver application were denied. *See Form I-290B, Notice of Appeal or Motion*, dated March 20, 2014.

The record includes, but is not limited to: briefs; correspondence; affidavits by the applicant's spouse and child; letters of support; documents concerning identity and relationships; academic, employment, financial, and medical documents; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 212(a)(9) of the Act provides, in relevant 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 5 years of the date of such removal ... 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 the Secretary of Homeland Security] has consented to the alien's reapplying for admission.

The record reflects that on February 8, 2010, immigration officials ordered the applicant removed<sup>1</sup> under section 235(b)(1) of the Act after she presented her California driver license and social security card to try to gain admission into the United States at the San Ysidro Port of Entry as a lawful permanent resident. The record also reflects that immigration officials granted the applicant parole and released her from custody under an order of supervision on March 11, 2010, with a condition that she appear for departure from Los Angeles International Airport on April 5, 2010. The applicant did not appear and she has not been removed; she still is in the United States. Accordingly, the applicant was found inadmissible pursuant to section 212(a)(9)(A)(i) of the Act. The applicant does not contest this finding.

*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)(6)(C)(i) of the Act and no waiver has been approved,<sup>2</sup> no purpose would be served in approving the applicant's Form I-212.

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.

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<sup>1</sup> The record includes a Notice and Order of Expedited Removal (Form I-860), indicating the applicant was found inadmissible on February 8, 2010, for falsely claiming to be a lawful permanent resident of the United States and for being an intending immigrant not in possession of proper documentation. The Certificate of Service on Form I-860 is not signed or dated, though the record includes references to the Form I-860 having been served on the applicant.

<sup>2</sup> We dismissed an appeal of the applicant's Form I-601 denial decision in a separate decision.