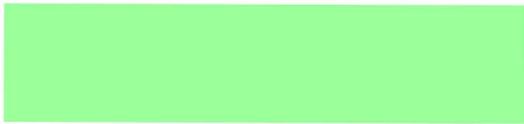




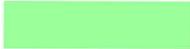
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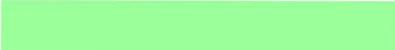
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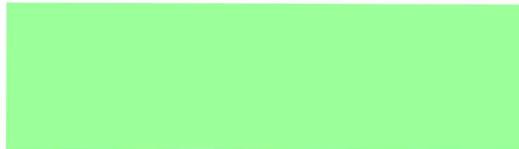
Office: ST. PAUL

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:



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,

*fj*  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the Field Office Director, St. Paul, Minnesota and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the prior decision of the AAO is affirmed.

The record establishes that the applicant is a native and citizen of Nigeria who was found to be inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 with his U.S. citizen spouse and children.

The Field Office Director noted that the applicant was ineligible for a grant of the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), because the record failed to establish that the applicant had departed the United States following the order of deportation. The applicant's Form I-212 was denied accordingly. *See Field Office Director's Decision*, dated September 12, 2013.

A subsequent appeal was dismissed by this office as a result of the applicant's failure to establish by supporting evidence that the favorable factors to be considered in a Form I-212 application outweighed the unfavorable ones. *See Decision of the AAO*, dated May 21, 2014.

On motion, counsel for the applicant submits the following: an affidavit from the applicant; medical documentation pertaining to the applicant; evidence establishing that Anthony Laguda, Jr. is the applicant's son; and financial documentation. 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.

As previously noted by this office, the record reflects that the applicant was ordered deported from the United States in September 1986. The applicant subsequently re-entered the United States with a fraudulent passport and nonimmigrant visa in 1988. The applicant was again ordered deported in June 2003, and in December 2013, the immigration judge denied the applicant's motion to reopen. The applicant's deportation order will, therefore, render him inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act upon his departure from the United States, and he will require permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant may apply for conditional approval of Form I-212 under 8 C.F.R. § 212.2(j) before departing the United States, notwithstanding his ineligibility for adjustment of status. See *Instructions for Form I-212*. The approval of Form I-212 under these circumstances is conditioned upon the applicant's departure from the United States, and the Field Office with jurisdiction over the applicant's place of residence has jurisdiction over the application, irrespective of whether a waiver under section 212(g),(h), or (i), or 212(a)(9)(B)(v) is needed.<sup>1</sup> See *Instructions for Form I-212, Appendix I*.

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:

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<sup>1</sup> As was also previously noted, upon departure from the United States, the applicant will have accrued over a year of unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until the date of the applicant's departure. As such, the applicant will be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). In addition, based on the applicant's misrepresentation with respect to his entry to the United States in 1988, the applicant will also be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. In order to seek a waiver of inadmissibility, the applicant will be required to file a Form I-601 waiver application pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), together with his application for an immigrant visa.

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

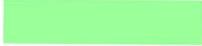
On appeal, we found that the favorable factors in this matter were the applicant's long-term residence, since 1988, in the United States; community ties in Minnesota; gainful employment since 2000 at [REDACTED] and the presence of his U.S. citizen spouse and children, born in 1984 and 1986. The unfavorable factors we found were the applicant's failure to depart the United States in 1983 pursuant to the terms of his nonimmigrant visa; the applicant's deportation in 1986; the applicant's failure to depart pursuant to a 2003 deportation order; the applicant's conviction in 1985 for False Representation, U.S. citizen, in violation of 18 U.S.C. § 911 for falsely representing he was a U.S. citizen when making application for educational grants and loans; the applicant's conviction in 1994 for Re-entering the United States Illegally, in violation of 18 U.S.C. §§ 1326(a) and (b)(1); fraud or willful misrepresentation when procuring entry to the United States in 1988; the applicant's use of multiple identities while in the United States and his possession of two Nigerian passports in different names; and periods of unlawful presence and unauthorized employment in the United States. We concluded that the applicant had not provided any documentation on appeal or with the Form I-212 submission establishing by supporting evidence that the favorable factors outweighed the unfavorable ones.

On motion, the applicant has submitted an affidavit. In the affidavit, he contends that he suffers from numerous medical conditions, including Polymyositis, blurred vision, general fatigue, constant aches and pain, headaches and memory loss, and is at risk of having a heart attack based on his medical history. In addition, he asserts that he has no family in Nigeria but that he has ties in the United States, including the presence of his spouse, two U.S. citizen children and two grandchildren. Further, the applicant references that he has been gainfully employed as a counselor at a group home for 14 years and has been a member of the [REDACTED] since 1998. Moreover, the applicant maintains that he has been living the same apartment since 1995. The applicant concludes by stating that other than his misrepresentation, he has not been convicted of any other crimes, is not a violent person, does not use alcohol, and is not engaged in any other activity that makes him a danger to society. *See Affidavit of Anthony Adetokunbo Laguda, Sr.*, dated June 19, 2014.

In support of the affidavit, the applicant submitted medical documentation from 2002-2004, but did not submit any documentation from his treating physician establishing the his current medical condition. He submitted a Form W-2 for 2013 evidencing his employment in 2013 with [REDACTED] and evidence establishing that [REDACTED] is the applicant's son. The record contains no further evidence to support the claim that the applicant merits the relief requested in the exercise of discretion.

On motion, the applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones. In application proceedings, it is the applicant's burden to establish

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*NON-PRECEDENT DECISION*

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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 motion will be granted and the prior decision of the AAO dismissing the appeal is affirmed.