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U.S. Citizenship
and Immigration
Services



Date: **SEP 17 2014** Office: NEBRASKA SERVICE CENTER

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)(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,

for

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 of India and citizen of the United Kingdom who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit through fraud or misrepresentation, and 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 and again seeking admission within 10 years of her last departure from the United States. The applicant is also found to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 her lawful permanent resident spouse.

The service center director found that the applicant had established that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility, but denied an application for waiver of inadmissibility (Form I-601) as a matter of discretion. 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 January 22, 2014.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the director erred in denying the I-601 waiver application and thus also erred in denying the Form I-212, as the decision relied on the grounds for denying the Form I-601. With the appeal counsel submits a brief. The entire record was reviewed and considered in rendering a decision on the appeal.

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 1992, subsequently applying for asylum in 1995. Her asylum application was referred to the immigration judge, where the applicant withdrew her asylum application and requested voluntary departure. The immigration judge denied voluntary departure and ordered the applicant removed in December 1995. The applicant appealed the decision, with the appeal ultimately denied by the Board of Immigration Appeals and the applicant removed from the United States in December 2004. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act until December 2014 and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

The director determined that the applicant had made material misrepresentations to the U.S. consulate in London by claiming that she had entered the United States via the visa waiver program, in her asylum application by claiming that she had lived her entire life in India, and to the immigration court by claiming that she had moved to Canada in an effort to avoid removal from the United States. Thus, the director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure a visa, other documentation, or admission into the United States or other benefit through fraud or misrepresentation. The director also found that the applicant had accrued unlawful presence of more than one year in the United States from April 1, 1997, with the implementation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) establishing unlawful presence, until May 15, 1998, when she filed a motion to reopen the December 1995 removal order.

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)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act and her waiver application has been denied, the appeal of the denial of her 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.