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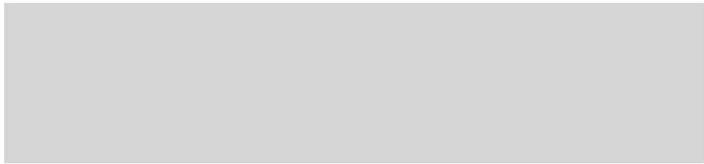
Date: **AUG 05 2015**

FILE #: 

IN RE: Applicant: 

APPLICATION: Application for Permission to Reapply for Admission into the United States pursuant to 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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Francisco, California, denied the application. The matter is now before the Administration Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Indonesia who entered the United States with a nonimmigrant visa in 2001. In July 2002, the applicant filed an I-589 application for asylum, which was referred to an immigration judge. In November 2004, the immigration judge granted asylum, and in March 2006, the Board of Immigration Appeal (BIA) sustained the Department of Homeland Security's (DHS) appeal and vacated the order granting asylum. On October 1, 2007, the Immigration Judge found that the applicant's application for asylum was frivolous pursuant to section 208(d)(4) of the Immigration and Nationality Act (the Act) and further noted that the applicant was ineligible for any benefit under the Act in accordance with section 208(d)(6) of the INA. The applicant was ordered removed to Indonesia. A subsequent appeal was dismissed by the BIA on June 18, 2009, and the BIA's decision was upheld on October 18, 2013 by the United States Court of Appeals for the Ninth Circuit. The applicant was removed from the United States in April 2014. The applicant was determined to be inadmissible to the United States pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), as an alien previously removed. The applicant seeks permission to reapply for admission to the United States in order to reside in the United States.

The field office director determined that pursuant to section 208(d)(6) of the Act, the applicant was permanently ineligible for any benefit under the Act and denied the application accordingly.

On appeal, the applicant contends that section 212 of the Act does not carry a ground of inadmissibility relating to a frivolous application, and the applicant is not precluded from obtaining an immigrant visa by section 208(d)(4) of the Act. The applicant thus asserts that the ground of inadmissibility determined by the consular officer to apply to him has a waiver available and the request for permission to reapply should be adjudicated accordingly.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 (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 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

Section 208(d)(6) of the Act provides in pertinent part:

Frivolous applications. - If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

As noted above, an immigration judge determined that the applicant had submitted a frivolous application for asylum and was ineligible for any benefits under the Act pursuant to section 208(d)(6) of the Act. The decision was affirmed by the BIA and the Ninth Circuit Court of Appeals.

The applicant is permanently ineligible for any benefit under the Act because he was determined by an immigration judge to have knowingly made a frivolous application for asylum. The applicant asserts that the finding he filed a frivolous asylum application did not render him inadmissible and should not preclude him from obtaining an immigrant visa. However, because of his removal order under section 240 of the Act, the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act irrespective of whether he is applying for permanent residence in the United States or for an immigrant visa abroad. He therefore requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. Permission to reapply for admission is a benefit under the Act for which the applicant is permanently ineligible pursuant to section 208(d)(6) of the Act.

The applicant is statutorily ineligible for permission to reapply for admission, a benefit under the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.