U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 0 6 2015 OFFICE: BOSTON FIELD OFFICE 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:

SELF-REPRESENTED

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, Boston, Massachusetts, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Iran and citizen of Canada who entered the United States on January 5, 1995, as a lawful permanent resident. He subsequently departed the United States and upon his return on February 24, 1999, he was found to have abandoned his lawful permanent residence and was placed in removal proceedings. The immigration judge ordered the applicant removed and an appeal to the Board of Immigration Appeals was dismissed. The U.S. Court of Appeals for the First Circuit denied the applicant's petition for review on February 3, 2005, and he remained in the United States until his removal on April 29, 2009. The applicant's departure from the United States rendered him inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), and he 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).

The field office director concluded that the record does not establish the applicant merits the discretionary approval of the Form I-212 and denied the application accordingly. *See Decision of the Field Office Director*, dated July 31, 2012.

On appeal, filed on August 29, 2012, and received by the AAO on July 22, 2014, the applicant submits an affidavit, a copy of an Approval Notice for a Petition for Alien Relative (Form I-130) dated October 1, 2008, and a National Visa Center letter dated February 16, 2011, responding to an inquiry from the applicant. The record contains a statement from the applicant's mother, financial documentation, and evidence submitted in conjunction with the Form I-130 filed on behalf of the applicant by his mother. 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 on January 5, 1995, the applicant entered the United States as the unmarried son of a lawful permanent resident, immigrant visa category F-24. When the applicant attempted to reenter the United States as a returning lawful permanent resident on February 24, 1999, it was determined by U.S. immigration inspectors that he had abandoned his permanent residence in the United States by subsequently becoming a citizen of Canada. The applicant was issued a Notice to Appear (Form I-862) before an immigration judge, who determined that the applicant had abandoned his lawful permanent residence by returning to Canada to obtain citizenship and by returning to Iran to operate a family business. The record shows that the applicant obtained Canadian citizenship on February 7, 1996. On March 26, 2002, the applicant was ordered removed by the immigration judge, and the Board of Immigration Appeals affirmed the decision without opinion on October 27, 2003. The U.S. Court of Appeals for the First Circuit denied the applicant's petition for review of the BIA decision on February 3, 2005. The applicant remained in the United States until being removed on April 29, 2009. The applicant's departure from the United States in 2009 renders him inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, and he requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

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 Application for Permission to Reapply After Deportation:

> 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.

In *Tin,* the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and he concluded that approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter the United States to work in the United States unlawfully. *Id.*

In *Matter of Lee,* 17 I&N Dec. 275 (Comm. 1978), the Commissioner held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Matter of Lee* at 278. The Commissioner stated,

> [T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] . . . . In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

In his affidavit the applicant states that he is sorry and regretful for his behavior and would like to visit his mother while settling outstanding business matters and restart his life and business. The applicant's mother states that she is a widow with no income, has never worked, and depends on her children for support. She states that she depended on the applicant to drive for her whenever necessary, to be a translator with doctors or nurses, and to be her supporter as he takes care of her emotionally and financially. She states that the applicant's gas station and garage closed due to his absence so she now struggles to make house payments from the applicant's savings. The record indicates that the applicant has two brothers living in the United States, but the statement from the applicant's mother does not address where they reside or whether they are able to provide her with any needed assistance.

The favorable factor in the applicant's case is the presence of his U.S. Citizen mother. As noted above, the applicant has two U.S. Citizen brothers, but the record does not provide any information about their residence or the nature of their relationship to the applicant or to his mother. The record does not establish that the applicant currently has any other ties to the United States, and the applicant submitted no additional evidence of favorable factors in support of this application. The unfavorable factors are the applicant's abandonment of his lawful permanent resident status, an order of removal from the United States and the applicant's subsequent failure to depart, convictions in Canada for Failure to Attend Court proceedings in 1994 and for Fraud under $5,000 in 1997, and a 2003 conviction in Massachusetts for Counterfeiting a Motor Vehicle Document.

We further note that the applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for a period of 10 years from his last departure from the United States for having accrued more than one year of unlawful presence from the denial of his petition of review by the U.S. Court of Appeals for the First Circuit on February 3, 2005, until he was

removed on April 29, 2009. In *Matter of Martinez-Torres*, the Regional Commissioner 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. 10 I&N Dec. 776 (Reg. Comm. 1964). The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and has not sought a waiver of this ground of inadmissibility.[1] As the applicant is currently inadmissible under another section of the Act, approval of the Form I-212 would serve no purpose as it would not result in the applicant's admissibility to the United States.

After a careful review of the record, it is concluded that the unfavorable factors, including the applicant's unlawful presence in the United States resulting in his inadmissibility under section 212(a)(9)(B)(i) of the Act, outweigh the favorable factors, and we find that the applicant has not established that a favorable exercise of the Secretary's discretion is warranted.

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.

[1] As noted in the decision of the Field Office Director, the applicant has not applied for an immigrant visa and states on the Form I-212 that he is seeking to enter the United States as a visitor. The applicant would need to submit Form I-192, Application for Advance Permission to Enter as Nonimmigrant, to seek a waiver of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.