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

U.S. Citizenship and Immigration Services

(b)(6)

Date: JUL 0 2 2015

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 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, Los Angeles Field Office, denied the application. 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 Pakistan who was found inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). The applicant was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The applicant 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.

The field office director determined that unfavorable factors outweigh the favorable factors and denied the Application for Permission to Reapply for Admission (Form I-212) as a matter of discretion. *See Decision of the Field Office Director* dated December 14, 2011.

On appeal, filed on January 12, 2012, and received by the AAO on February 2, 2015, the applicant asserts that his spouse suffers great hardship and that he is a person of moral character. With the appeal the applicant submits a statement. The record contains statements from the applicant, his spouse, his spouse's mother, and the priest at a church the applicant attends; financial documentation; country information for Pakistan; and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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.-
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> (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.
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> (ii) Other aliens.-Any alien not described in clause (i) who-
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> (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 January 1992 and filed an Application for Asylum and for Withholding of Removal (Form I-589), which was withdrawn on March 16, 1995, before an immigration judge, who granted the applicant voluntary departure until January 17, 1996. However, the applicant failed to depart during that period, a warrant of deportation was issued on January 18, 1996, and he was subsequently removed from the United States to Pakistan on March 10, 1997. The applicant re-entered the United States in February 1999 as a D-1 crewman.[1] The record reflects that the applicant was a crewmember on a ship in and on February 20, 1999, was reported as a deserter. The applicant does not contest the finding he is inadmissible under section 212(a)(9)(A)(i) of the Act.

The applicant was also found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States through fraud or misrepresentation. The field officer director found that the applicant had obtained a D-1 visa while not disclosing his 1997 deportation and thus determined the applicant inadmissible under section 212(a)(6)(C)(i). The applicant did not contest this finding of inadmissibility but applied for a waiver of inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i). The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 accordingly. *See Decision of the Field Office Director* dated December 14, 2011.

In a separate decision, we dismissed an appeal of the denial of the applicant's Form I-601. 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). As the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and his waiver application was denied, no purpose would be served in granting the applicant's Form I-212.

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[1] In an August 15, 2006, statement to U.S. Immigration and Customs Enforcement agents the applicant stated that he had entered the United States without inspection from Canada through Washington, on July 15, 2005. On Form I-589, dated October 5, 2006, the applicant stated that he had traveled to Canada on a cargo ship then entered the United States in October or November 1998 without inspection near Washington. In a statement before an asylum officer in February 8, 2008, the applicant stated that he had entered as a crewman but that he had disembarked from a ship in North Carolina.

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.