



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 30 2015

FILE #:

APPLICATION RECEIPT #:

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:

NO REPRESENTATIVE OF RECORD

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application to reapply for admission was denied by the Director, Nebraska Service Center (the Director). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native of Iraq and citizen of Jordan who was removed from the United States on October 19, 2006, pursuant to a final order of removal under section 240 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227, as an alien who remained in the United States longer than permitted after admission as a nonimmigrant and as an alien convicted of an aggravated felony. 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 Director determined that the applicant would remain inadmissible because of the denial of his Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), and denied his Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) as a matter of discretion. *See Decision of the Director*, dated May 30, 2014.

On appeal, the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erroneously denied his Form I-212 because it overlooked many important factors in its discretionary denial of his Form I-601. The applicant also asserts that he is appealing the denial of his Form I-212 as a matter of law, and in support of this assertion, cites to precedent administrative decisions. *See Form I-290B, Notice of Appeal or Motion*, dated June 25, 2014

The record includes, but is not limited to: motions and correspondence; statements by the applicant and his spouse; the applicant's conviction records; documents concerning identity and relationships; employment, financial, medical, and mental health documents; a journal article; and documents about conditions in the United Arab Emirates. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in relevant part:

(A) Certain aliens previously removed.-

...

(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

...

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 Attorney General [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

The record reflects that the applicant last entered the United States on or about October 19, 1988 as a nonimmigrant visitor with authorization to remain for two months. The record also reflects that he did not timely depart from the United States, and he was placed in removal proceedings before the immigration court. The immigration judge ordered the applicant removed to Jordan on April 30, 2001. The applicant's appeal to the Board of Immigration Appeals (BIA) was dismissed on March 29, 2002. The record further reflects that the applicant's subsequent motions to stay his removal were denied by the U.S. Circuit Courts of Appeal, whereupon the applicant became subject to a final order of removal. The applicant was removed from the United States on October 18, 2006. The record reflects that he has remained outside the United States to date.

Based on the foregoing, the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act. The applicant does not contest this finding. Accordingly, we will determine, as a matter of discretion, whether an exception under 212(a)(9)(A)(iii) of the Act should be applied to the applicant's inadmissibility so that he may reside with his U.S. citizen spouse.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. We have found that the applicant warrants a favorable exercise of discretion related to the adjudication of his Form I-601. For the reasons stated in that finding, we find that the applicant's Form I-212 should also be granted as a matter of discretion. Accordingly, the applicant is eligible for a section 212(a)(9)(A)(iii) exception to inadmissibility.

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 been met.

ORDER: The appeal is sustained.