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

(b)(6)

U.S. Citizenship and Immigration Services

Date: MAR 0 3 2015 Office: NEW YORK 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 District Director, New York, New York, 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 record reflects that the applicant is a native and citizen of Haiti who entered the United States on or about August 27, 2004 using the passport and identity of another person. The applicant was ordered removed by an immigration judge on May 17, 2006, and he departed the United States on April 27, 2012, returning on April 29, 2012 with advance parole. The applicant was found inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) as an alien who departed the United States while an order of removal was outstanding and who seeks admission within 10 years of the date of his departure. 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), in order to reside in the United States with his U.S. citizen spouse.

The District Director determined that consent to reapply for admission was not warranted because the applicant failed to demonstrate that his favorable equities outweigh his unfavorable factors and denied the application for permission to reapply for admission accordingly. *See District Director's Decision,* dated March 3, 2014.[1]

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

> (A) Certain alien 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 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.
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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
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> (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

[1] The decision of the District Director erroneously states that the applicant was issued a final order of removal on November 9, 1993 and that the applicant was removed from the United States on May 26, 2009. Although these dates are incorrect, the record establishes that the applicant was ordered removed on May 17, 2006, departed the United States on April 27, 2012, and therefore requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

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.

The record indicates that the applicant was ordered removed by an immigration judge on May 17, 2006, after his asylum application had been referred to the immigration court. The applicant was granted Temporary Protected Status on July 13, 2010. On March 1, 2012, the applicant was issued an advance parole document, and the record indicates that the applicant departed the United States on April 27, 2012. He is therefore inadmissible under section 212(a)(9)(A)(ii) of the Act as an alien who departed the United States while an order of removal was outstanding and who seeks admission within 10 years of the date of his departure. The applicant does not contest the finding he is inadmissible under section 212(a)(9)(A)(ii) 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 applicant entered the United States on August 27, 2004, using a passport which belonged to another person. 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 District 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 District Director* dated March 3, 2014.

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.

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.