



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF H-R-

DATE: NOV. 2, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-212, APPLICATION FOR PERMISSION TO REAPPLY FOR ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR REMOVAL

The Applicant, a citizen of Bosnia and Herzegovina, seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). The Applicant was also determined to be inadmissible under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), concerning controlled substance traffickers.

In a decision dated October 24, 2014, the Director concluded that because the Applicant's Form I-601, Application for Waiver of Ground of Inadmissibility was denied he would remain inadmissible even if his Form I-212 application were granted. The application was thus denied as a matter of discretion.

On appeal, filed on November 21, 2014, and received by us on April 16, 2015, the Applicant asserts that the Director erred because he was charged but not convicted for violations involving distribution of a controlled substance. The Applicant notes that he was convicted of attempted possession of a controlled substance, and that as his conviction has been vacated he no longer has a conviction for immigration purposes. The entire record was reviewed and considered in rendering this decision.

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

(b)(6)

*Matter of H-R-*

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 [REDACTED] the Applicant pled guilty in the Circuit Court of [REDACTED] Missouri, to Attempted Possession of a Controlled Substance, a Class D felony, and was sentenced to four years imprisonment, suspended, and placed on five years' probation.

On December 14, 2009, the Applicant was placed in removal and was ordered removed by an immigration judge on February 3, 2010. The Applicant was removed to Bosnia and Herzegovina on March 16, 2010. The Applicant is thus inadmissible under section 212(a)(9)(A) of the Act.

The Applicant was also found inadmissible to the United States under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), concerning controlled substance traffickers. The Applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). The Director concluded that because the Applicant is inadmissible under section 212(a)(2)(C) of the Act he is not eligible for a waiver of inadmissibility and denied the waiver application accordingly.

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)(6)(C)(i) of the Act. His Form I-601 application was denied, and a subsequent appeal has been dismissed by this office in a separate decision. The instant appeal will be dismissed as a matter of discretion.

*Matter of H-R-*

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.

Cite as *Matter of H-R*, ID# 13972 (AAO Nov. 2, 2015)