



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

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

MATTER OF R-A-

DATE: SEPT. 23, 2015

APPEAL OF BALTIMORE FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Ghana, seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (INA, or the Act) § 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). The matter is now before us on appeal. The appeal will be dismissed.

The record establishes that the Applicant attempted to procure entry to the United States with a fraudulent passport in June 1995. In October 1995 an Immigration Judge granted the Applicant asylum, but that decision was appealed. In May 1996, the Board of Immigration Appeals (BIA) determined that the Applicant had not established a well-founded fear of persecution in his native Ghana and he was thus ordered excluded and deported from the United States. A subsequent appeal was dismissed by the BIA in December 1998 and the Applicant was deported in February 2007.

The District Director determined that the Applicant had failed to establish that the favorable factors in his application outweighed the unfavorable factors in his application. The Applicant's Form I-212, Application for Permission to Reapply for Admission After Deportation or Removal was denied accordingly.

On appeal, filed in January 2013 and received at this office in January 2015, the Applicant contends that his U.S. citizen spouse has experienced hardship as a result of his residence abroad. The Applicant maintains that evidence of his spouse's health conditions will be submitted within 30 days. As of today, no additional evidence in support of the appeal has been received by this office. The record is thus considered complete and was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 5 years of the date of such removal (or

(b)(6)

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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 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 establishes that on December 12, 2014, the Field Office Director, Baltimore, Maryland, issued a Notice of Intent to Revoke (NOIR) the Form I-130, Petition for Alien Relative, filed by the Applicant's U.S. citizen spouse on behalf of the Applicant in July 2004 and approved in April 2012. The basis for the NOIR was the Field Office Director's discovery that public records obtained through the Maryland Judiciary Case Search indicated that the Applicant's U.S. citizen spouse had filed for an absolute divorce from the Applicant on [REDACTED] 2014 in the Circuit Court for [REDACTED] County. As of today, the record does not indicate that the Applicant's spouse submitted a response to the NOIR. Public records obtained by this office through the Maryland Judiciary Case Search indicate that a "Judgment of Absolute Divorce" was granted on [REDACTED] 2015.

Section 205.1 of Title 8 of the Code of Federal Regulations states, in pertinent part:

- (a) Reasons for automatic revocation. The approval of a petition...made under section 204 of the Act...is revoked as of the date of approval:
 - (3) If any of the following circumstances occur...before the decision on his or her adjustment application becomes final:
 - (i) Immediate relative and family-sponsored petitions, other than Amerasian petitions. (D) Upon the legal

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termination of the marriage when a citizen or lawful permanent resident of the United States has petitioned to accord his or her spouse immediate relative or family-sponsored preference immigrant classification under 201(b) or section 203(a)(2) of the Act....

The viability of the Form I-212 is dependent on an application for admission that is, in turn, based on an approved Form I-130. The Form I-130 petition submitted by the Applicant's spouse has been automatically revoked as a result of the legal termination of the marriage between the Applicant and his spouse.¹ The instant appeal will thus be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of R-A-*, ID# 12146 (AAO Sept. 23, 2015)

¹ On July 8, 2015, this office issued a Notice of Intent to Dismiss the Appeal, providing the Applicant thirty (30) days from the date of the notice to respond with documentation establishing that the marriage between the Applicant and his spouse had not been legally terminated. As of today, this office has not received a response to the Notice.