



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

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

MATTER OF A-R-M-

DATE: JUNE 22, 2016

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 native and citizen of Jamaica, was found inadmissible for having been previously ordered removed and convicted of an aggravated felony. He seeks permission to reapply for admission to the United States. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). U.S. Citizenship and Immigration Services (USCIS) may remove the inadmissibility bar by granting permission to reapply in the exercise of discretion.

The Director, Nebraska Service Center, denied the application. The Director concluded that as the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied, the Applicant would remain inadmissible even if his Form I-212 were approved. The Director further determined that the Applicant's Form I-212 should be denied as a matter of discretion.

The matter is now before us on appeal. In the appeal, the Applicant submits a brief asserting that the Director erred in determining that he has been convicted of an aggravated felony, and that he merits a favorable exercise of discretion.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking permission to reapply for admission to the United States and has been found inadmissible for having been previously order removed and convicted of an aggravated felony. Section 212(a)(9)(A) of the Act provides, in pertinent part:

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 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.

(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.

Individuals found inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii). Section 212(a)(9)(A)(iii) of the Act provides, in pertinent part:

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 continuous territory, the [Secretary of Homeland Security] has consented to the alien's reapplying for admission.

Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *See Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *See Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973); *see also Matter of Lee, supra*, at 278 (Finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience"). Generally, favorable factors that come into existence after an alien is placed in removal proceedings, so-called "after-acquired equities," are accorded less weight in a discretionary determination. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301-302

(BIA 1996); *see also Ghassan v. INS*, 972 F.2d 631 (5th Cir. 1992); *Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991); *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980).

## II. ANALYSIS

The issue presented on appeal is whether the Applicant has been convicted of an aggravated felony and merits a favorable exercise of discretion to approve his Form I-212. We have rendered a decision on the Applicant's Form I-601, finding that the Applicant has been convicted of an aggravated felony and is not eligible for a waiver of inadmissibility for his crime involving moral turpitude conviction under section 212(h) of the Act, 8 U.S.C. § 1182(h). As the Applicant remains inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for his extortion conviction, he does not merit a favorable exercise of discretion for his Form I-212.

### A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(9)(A) of the Act for having been previously ordered removed and convicted of an aggravated felony.

The Applicant submitted a Form I-601 and Form I-212, both denied by the Director in 2015. The Applicant appealed both denials to us. In our decision on the Applicant's Form I-601 appeal, we determined that the Applicant's extortion conviction under Michigan Compiled Laws § 750.21 constituted an aggravated felony under section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F).

The Applicant, in 2009, was ordered removed to Jamaica by an immigration judge. As the Applicant has been previously ordered removed and convicted of an aggravated felony, he is inadmissible under section 212(a)(9)(A)(ii) of the Act.

### B. Permission to Reapply

In our decision on the Applicant's Form I-601, we determined that the Applicant is inadmissible to the United States under section 212(a)(2)(A) of the Act, as his extortion conviction is a conviction for a crime involving moral turpitude. Further, as the Applicant entered the United States as a lawful permanent resident and was subsequently convicted of an aggravated felony for which he served over 1 year of imprisonment, he is not eligible for a waiver of this inadmissibility under section 212(h) of the Act.

*Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964) states that an application for permission to reapply for admission is denied, in the exercise of discretion, for an applicant who is mandatorily inadmissible to the United States under another section of the Act.

As no waiver is available to the Applicant under section 212(h) of the Act, he does not merit a favorable exercise of discretion under section 212(a)(9)(A)(iii) of the Act.

III. CONCLUSION

The Applicant has the burden of proof in seeking permission to reapply for admission. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-R-M-*, ID# 15705 (AAO June 22, 2016)