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

H4.

Date: JUL 10 2012 Office: VIENNA, AUSTRIA

FILE: [REDACTED]

IN RE:

APPLICANT: [REDACTED]

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Vienna, Austria , 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 sustained.

The record reflects that the applicant is a native and citizen of Albania who was granted voluntary departure, failed to depart within the time period permitted, and was later removed to Albania. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). 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 and children.

The Field Office Director determined the applicant did not merit a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated July 28, 2010.

On appeal counsel for the applicant contends the discretionary denial was incorrect because it was based on an erroneous conclusion that the applicant was employed without authorization.

The record includes, but is not limited to, statements from the applicant and his spouse, letters of support from family, friends, and employers, medical, educational, and financial documents, articles on medical issues and country conditions, other applications and petitions filed on behalf of the applicant, evidence of birth, marriage, divorce, residence, and citizenship, documentation of criminal and removal proceedings, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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 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 the applicant entered the United States without inspection on August 15, 1999 and was issued a Notice to Appear that day. An immigration judge denied the applicant's Form I-589 Application for Asylum and Withholding of Removal, and granted him voluntary departure with an alternate order of removal on January 26, 2005. A subsequent appeal was dismissed by the Board of Immigration Appeals (BIA) on July 18, 2006, and a motion to reopen the BIA's decision was denied on November 28, 2006. The applicant failed to depart within the time period permitted, and the grant of voluntary departure automatically became an alternate order of removal. The applicant was removed to Albania on April 15, 2008. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(i) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors.

As noted in a separate decision related to the Form I-601, the unfavorable factors include several immigration violations. The applicant entered the United States without inspection, remained past his authorized period of voluntary departure, and was removed to Albania by immigration officials. The applicant has also accrued more than one year of unlawful presence in the United States. The favorable factors include the extreme hardship to the applicant's spouse, some evidence of hardship to the applicant's children given his inadmissibility, family ties in the United States, evidence of good character as set forth in letters from family, and residence of some duration in the United States.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. The Form I-212 should be granted as a matter of discretion.

ORDER: The appeal is sustained.