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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

File: 

IN RE: Applicant: 

APPLICATIONS: Application for Permission to Reapply for Admission 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

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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 applicant is a native and citizen of Albania, who entered the United States using a photo-substituted, Greek passport bearing a valid U.S. visa on or about May 31, 2000. On April 2, 2003, an Immigration Judge denied his March 12, 2001 applications for asylum and withholding of removal, and ordered him removed to Albania. After his last appeal was denied on December 5, 2005, the applicant remained in the United States until being detained on August 14, 2009 as a fugitive alien and deported on October 6, 2009. The applicant sought an immigrant visa as the beneficiary of an approved spousal Petition for Alien Relative (Form I-130). Based on the applicant's having procured admission to the United States by using fraudulent documents, unlawful presence of one year or more, and being deported, a Consular Officer found him to be inadmissible to the United States under sections 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), and 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant is seeking a waiver of inadmissibility and permission to reapply for admission in order to reside in the United States with his U.S. citizen wife and mother, and his lawful permanent resident father.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) as well as the Application for Permission to Reapply for Admission (Form I-212). *Decision of Field Office Director*, July 29, 2010. The applicant filed a motion to reconsider the decision of the field office director. The motion was denied on November 4, 2010.

On appeal, counsel for the applicant contends that the denial decision erred in overlooking the extreme hardships that the applicant's parents will suffer as a result of the applicant's inadmissibility and in not considering hardship in the aggregate. Counsel further explains that consent to reapply should be granted because the equities in this matter favor the applicant in that the favorable factors outweigh the adverse factors. In support of the appeal, counsel submits a brief and updated documentation including, but not limited to: hardship statements; medical records; psychological diagnoses; tax records for a business; and photographs. The record also contains documentation submitted in support of the original waiver request and request for permission to reapply for admission. The entire record was reviewed and considered in rendering this decision.

The AAO notes that the field office director denied the applicant's Form I-212 in the same decision as a matter of discretion based on the denial of the Form I-601, and that the applicant filed a Notice of Appeal or Motion (Form I-290B) for each denial. As the AAO has separately found the applicant eligible for a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, it will withdraw the field office director's decision on the Form I-212 and render a new decision.

Section 212(a)(9)(A) provides, pertinent part:

(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 ... 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 ... 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 Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien’s reapplying for admission.

On April 2, 2003, an Immigration Judge ordered the applicant removed from the United States. After exhausting his appeals, the applicant was detained by U.S. Immigration and Customs Enforcement and deported in 2009. He is therefore inadmissible under section 212(a)(9)(A)(ii) of the Act and must obtain permission to reapply for admission.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant’s Form I-212 should also be granted as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility and for consent to reapply for admission, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The denial is withdrawn and the application for permission to reapply granted.