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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

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

H4



DATE: JUL 12 2012 OFFICE: NEWARK, NEW JERSEY



IN RE: Applicant:

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) was denied by the Field Office Director, Newark, New Jersey and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Dominican Republic who was ordered removed by an Immigration Judge on December 14, 2000. The applicant failed to surrender himself for removal on August 17, 2001 as directed and remained unlawfully in the United States subject to a final order of removal. The applicant is, therefore, inadmissible 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). 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 minor children, born in 2005 and 2007.

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 Field Office Director determined that the applicant's "unfavorable factors outweigh the favorable ones" and denied the Form I-212 application accordingly. *See Field Office Director's Decision*, dated July 09, 2007.

Counsel asserts that the denial of the Form I-212 application and refusal of admission to the applicant "would result in extreme hardship to the applicant's U.S. citizen spouse under section 212(a)(9)(B)(v) of the Act." *See Form I-290B, Notice of Appeal or Motion*, dated July 23, 2007.

The record contains no evidence that the applicant has filed a Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), the only appropriate application through which an extreme hardship waiver under section 212(a)(9)(B)(v) of the Act may be sought. The AAO notes that on the dates of both the Field Office Director's decision and the filing of the Form I-212 application, the applicant was not inadmissible under section 212(a)(9)(B)(i)(II) of the Act because he had not yet departed the United States. The AAO finds, however, that the applicant's subsequent removal on August 12, 2007 triggered the unlawful presence provisions of the Act and he is currently inadmissible under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his departure from the United States.

Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who- ...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record contains no assertions or evidence identifying the applicant's current whereabouts or his residence at any time following his August 2007 removal. While counsel initially sought to obtain Form I-212 permission for the applicant before he departed the United States, the AAO will presume in the absence of evidence to the contrary that the applicant remains in the Dominican Republic and now seeks permission to reapply for admission to the United States from abroad.

In addition to his inadmissibility under sections 212(a)(9)(A)(ii) and 212(a)(9)(B)(i)(II) of the Act, the record shows that on or about February 1, 2002, the applicant was refused entry into the United States, allowed to withdraw his application for admission hereto, and found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. §

1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. However, the applicant has not filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, and he remains inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C) of the Act. For this reason, no purpose would be served in approving his Form I-212 application for permission to reapply for admission and the appeal will be dismissed.

The AAO finds that in addition to the applicant's inadmissibility under sections 212(a)(9)(A)(ii), 212(a)(9)(B)(i)(II), and 212(a)(6)(C)(i) of the Act, he is subject to section 204(c) of the Act which states:

[N]o petition shall be approved if (1) the alien has previously . . . sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

8 U.S.C. § 1154(c). The corresponding regulation provides:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

The record reflects that the applicant entered the United States on May 17, 1992 with temporary authorization to stay in the United States only until May 21, 1992. The applicant remained in the United States beyond his authorized stay, married a U.S. citizen, [REDACTED] on August 10, 1994 and on June 26, 1996 was granted two years conditional residence status on the basis of that

marriage. A joint Form I-751, Petition to Remove the Conditions on Residence, was filed on March 12, 1998 and an adjustment interview was set for June 26, 1998. The applicant failed to appear for the interview and on July 18, 2000, the district director terminated his conditional resident status as of June 26, 1998. On October 12, 2000 Ms. [REDACTED] withdrew the Form I-751 and provided a signed sworn affidavit and testimony that her marriage to the applicant was entered into solely for immigration purposes, that money was exchanged, and they never resided together as husband and wife or consummated the marriage. A Notice to Appear before the Immigration Judge in Removal Proceedings under section 237(a)(1)(D)(i) was issued on October 27, 2000. When the applicant failed to appear on December 14, 2000 he was ordered removed by the immigration judge in absentia and directed to surrender himself for removal on August 17, 2001. The applicant failed to present himself for removal and he remained unlawfully in the United States, subject both to a final order of removal and the inadmissibility provisions of 212(a)(9)(A) of the Act. [REDACTED] subsequently divorced the applicant who married his current U.S. citizen spouse, [REDACTED] on August 7, 2006. The latter filed a Form I-130 petition for alien relative on the applicant's behalf which was approved on March 27, 2007. On August 6, 2007 the applicant was apprehended by immigration authorities as being subject to a final order of removal. He was found deportable under section 237 of the Act, subject to the December 14, 2000 removal order by an immigration judge in proceedings under section 240 of the Act, and was removed on August 12, 2007 for a period of ten (10) years.

Because the record shows that the applicant did not enter into his first marriage in good faith and instead did so solely for immigration purposes, the AAO must conclude that the applicant's prior marriage is within the purview of section 204(c) of the Act as a marriage entered into for the purpose of evading the immigration laws. In that the applicant's prior marriage has been found to have been entered into for the purpose of evading the immigration laws of the United States, he is permanently barred from obtaining an immigrant visa to enter the United States pursuant to his marriage to a U.S. citizen. In light of this permanent bar, no purpose would be served in adjudicating the applicant's Form I-212 application for permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, as there is no basis for his eligibility for permanent residence in the United States.¹

As noted above, because the applicant is inadmissible to the United States pursuant to sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act, he requires a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) in order to enter the United States. Because the applicant has failed to file a Form I-601, Application for Waiver of Grounds of Inadmissibility, there is no basis under which the AAO may consider the applicant's waiver eligibility. As such, no purpose would be served in adjudicating the applicant's Form I-212 application.

Section 291 of the Act, 8 U.S.C. §1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. The applicant in the instant case has not met that burden, in that he has not shown that a purpose would be served in adjudicating his Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or

¹ Pursuant to 8 C.F.R. § 205.2, the approval of an I-130 petition is revocable when the necessity for the revocation comes to the attention of USCIS.

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Removal under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A). Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.