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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 24 2012 Office: NEW YORK, NEW YORK FILE: [REDACTED] [REDACTED] relates)

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.

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 in accordance with the instructions on 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 District Director, New York, New York, 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 dismissed.

The record reflects that the applicant is a native and citizen of [REDACTED] who departed the United States while an order of removal was outstanding. The applicant is 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.

The District Director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See District Director's Decision*, dated December 14, 2011.

On appeal, counsel for the applicant contests the District Director's conclusions and requests that the applicant's request for permission to reapply for admission be approved. *Form I-290B*, received January 13, 2012.

The record contains, but is not limited to, a brief from the applicant's spouse; statements from the applicant and his spouse; copies of birth certificates and marriage certificates for the applicant, his spouse and their children; a [REDACTED] and family dynamics assessment by [REDACTED], dated December 10, 2010; a statement from [REDACTED], dated February 11, 2010, pertaining to the applicant's children; copies of tax returns from 2004 – 2009 for the applicant's spouse; copies of bank statements; and photographs of the applicant and his family. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 initially entered the United States without inspection on or about February 28, 1992. He was entered into removal proceedings and ordered removed in absentia on July 1, 1992. The applicant subsequently sought to adjust his status to lawful permanent resident based on his marriage to a U.S. citizen. The applicant was granted Temporary Protected Status (TPS) in 2001 as a native of [REDACTED]. The applicant departed the United States under Advanced Parole in 2002, and currently resides in the United States. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act as an alien who departed the United States while a removal order was outstanding and seeks re-admission within 10 years of that departure. The applicant requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

The District Director concluded that the applicant misrepresented material facts when applying for TPS in the United States, and as such, he is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. Specifically, the applicant failed to reveal his prior removal order, convictions for theft-related offenses and true birth date.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) In general. 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 chapter is inadmissible.

Counsel addresses the District Director's finding that the applicant failed to provide accurate information when entering the United States and when applying for TPS. He states that the incorrect birth date listed on the applicant's initial entry documents was a typographical error, that he failed to reveal his criminal record when applying for TPS because he had a notario complete his forms, and

that he was never informed about his prior removal order, alien registration number or other information from United States Citizenship and Immigration Services (USCIS).

The examination of the record reveals no evidence to corroborate counsel's assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As such, the AAO finds the record to establish that the applicant failed to reveal his prior removal order, convictions for theft-related offenses and true birth date when applying for admission or benefits under U.S. immigration law. The record supports that the applicant pled guilty to two offenses under New York Penal Law § 165.05 in 1996 and 1998 for unauthorized use of a vehicle. In 1994 he was arrested in New York and charged with grand larceny and possession of burglary tools. The applicant has not presented sufficient records of his criminal activity and related court proceedings in order for the AAO to determine if he has been convicted of a crime involving moral turpitude. It is noted that theft-related offenses are often crimes involving moral turpitude that render an individual inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Whether the applicant has been previously removed or whether he has been convicted of crimes that render him inadmissible is material to his eligibility for admission or other benefits under the Act. Accordingly, the applicant has not shown that he was erroneously found inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant requires a waiver of inadmissibility under section 212(i) of the Act.

As noted above, the applicant may also be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. If so, the applicant requires a waiver of inadmissibility under section 212(h) of the Act.

The District Director also found the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act as an alien who departed the United States after having accrued one year or more of unlawful presence and who is seeking admission into the United States within 10 years of that departure. Inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act may be waived under section 212(a)(9)(B)(v) of the Act.

The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act. He may also be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, requiring a waiver under section 212(h) of the Act. The applicant further does not contest the finding that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, which requires a waiver under section 212(a)(9)(B)(v) of the Act. The record does not reflect that the applicant has filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, seeking waivers under sections 212(a)(9)(B)(v), 212(h), or 212(i) of the Act. Because the applicant has failed to file a Form I-601 application, he will remain inadmissible to the United States regardless of whether or not the present application is granted. 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 he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.