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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 02 2009

IN RE: [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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 applicant is a native and citizen of Morocco who, on August 20, 1997, married a U.S. citizen, [redacted]. On September 25, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) filed on his behalf by [redacted]. On March 2, 1998, the applicant appeared at Immigration and Naturalization Services' (now U.S. Citizenship and Immigration Services (USCIS)) Boston, Massachusetts District Office. The applicant testified that he had entered the United States without inspection in April 1996. On February 8, 1999, [redacted] withdrew the Form I-130 since she had been separated from the applicant for a period of two months. On the same day, the Form I-485 was denied and the applicant was placed into immigration proceedings. On April 21, 1999, the immigration judge ordered the applicant removed *in absentia*. The applicant filed a motion reopen. On March 21, 2000, the immigration judge denied the applicant's motion to reopen. The applicant failed to depart the United States. On July 5, 2003, the applicant married his current U.S. citizen spouse, [redacted] On October 23, 2003, the applicant was removed from the United States and returned to Morocco, where he has since resided. On February 13, 2004, [redacted] filed a Form I-130 on behalf of the applicant. On March 8, 2005, the Form I-130 was approved and forward to the National Visa Center (NVC). On August 25, 2005, the applicant filed the Form I-212. 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) and 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 son.

The director determined that the unfavorable factors outweighed the favorable factors in the applicant's case and denied the Form I-212 accordingly. *See Director's Decision* dated May 3, 2006.

On appeal, counsel contends that the director gave undue weight to negative factors in the applicant's case. *See Counsel's Brief,* dated June 29, 2006. In support of her contentions, counsel submits the referenced brief, a letter from the applicant and his spouse, financial and medical documentation and photographs. The entire record was reviewed in rendering a decision in this case.

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 on a 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.

Counsel, the applicant and his spouse assert that the applicant has remained outside the United States and lived in Morocco since he was removed on October 23, 2003. Counsel asserts that an applicant may apply for permission to reapply for admission prior to his or her return to the United States. The record reflects that the approved Form I-130 has been forwarded to the NVC for processing of the applicant's immigrant visa at a U.S. Consulate abroad. The AAO finds the evidence of record sufficient to establish that the applicant is waiting to consular process his immigrant visa at a U.S. Consulate in Morocco.

The AAO notes that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien who has accumulated more than one year of unlawful presence, from February 8, 1999, the date on which the Form I-485 was denied and the applicant was placed into immigration proceedings, until October 23, 2003, the date on which he was removed from the United States and returned to Morocco, and he is seeking admission within ten years of that departure. To seek a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), an applicant must file an Application for Waiver of Ground of Inadmissibility (Form I-601).

As required by 8 C.F.R. § 212.2(d), an immigrant visa applicant who is outside the United States and requires both a waiver and permission to reapply for admission must simultaneously file the Form I-601 and the Form I-212 with the U.S. Consulate having jurisdiction over the applicant's place of residence. As the applicant has not complied with the regulatory requirements for filing the Form I-212, the application in this matter was improperly filed. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.