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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 24 2008

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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

It is noted that the applicant, through counsel, requested a 30-day extension to submit a brief and/or evidence, but nothing was submitted within 30-days. On May 2, 2008, in response to a facsimile from the AAO, counsel indicated that she would not be submitting further evidence. Therefore, the record must be considered complete.

The record establishes that the applicant is a native and citizen of India who initially entered the United States without inspection on December 24, 1994. On November 14, 1997, a Notice to Appear (NTA) was issued against the applicant. On April 9, 1998, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589). On October 28, 1998, an immigration judge in Chicago, Illinois, granted the applicant voluntary departure. On November 13, 1998, the applicant filed an appeal of the immigration judge's decision to the Board of Immigration Appeals (Board). On June 13, 2002, the Board affirmed the immigration judge's decision and ordered the applicant to voluntarily depart the United States within 30 days. The applicant was granted an extension on his voluntary departure until October 13, 2002. The applicant failed to depart the United States as ordered. On July 28, 2003, a Warrant of Removal/Deportation (Form I-205) was issued. On February 26, 2004, the applicant was removed from the United States. On March 15, 2006, a Petition for Alien Relative (Form I-130), filed on behalf of the applicant by his wife, was approved. Based on the applicant's previous order of removal, the applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I). Additionally, the AAO notes that the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of 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 last departure from the United States. He now 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 with his lawful permanent resident wife and United States citizen daughter.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

. . . .

(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 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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.

(v) Waiver.-The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

On April 3, 2006, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) with the Nebraska Service Center. On December 7, 2006, the Acting Director, Nebraska Service Center, denied the applicant's Form I-212 stating that since the applicant "reside[s] outside of the United States and [is] applying for a visa, a consular officer at the appropriate American Consulate having jurisdiction must determine the waiver. Therefore, the waiver is rejected as being improperly filed and the applicant is advised to file the waiver with the appropriate American Consulate." *Acting Director's Decision*, dated December 7, 2006. The Acting Director denied the applicant's Form I-212 accordingly. *Id.*

On appeal, the applicant, through counsel, asserts that "the instructions to the Form I-212 and instructions found on the USCIS website state 'if you are abroad, and intend to apply for an immigrant visa, submit this form to the Local Office in which your deportation proceedings were held.' (see attached copies of instructions). In this instance, the applicant's deportation proceedings were held in Chicago, Illinois, making the proper place to file such an application the Nebraska Service Center. The decision to deny on this basis is contrary to the instructions contained on the form and on the USCIS website." *Form I-290B*, filed January 8, 2007.

The AAO notes that since the applicant is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act and he intends to apply for an immigrant visa, he must file a Waiver of Grounds of Excludability (Form I-601) at the consular office considering the visa application. *See* 8 C.F.R. § 212.7(a)(1). Additionally, since the applicant is currently residing abroad, he is required to file the Form I-601 and the Form I-212 simultaneously with the American consul having jurisdiction over the alien's place of residence.

8 C.F.R. § 212.2(d) states, in pertinent part:

> (d) *Applicant for immigrant visa.* Except as provided in paragraph (g)(3) of this section, an applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file Form I-212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held. Except as provided in paragraph (g)(3) of this section, if the applicant also requires a waiver under section 212 (g), (h), or (i) of the Act, Form I-601, Application for Wavier of Grounds of Excludability, must be filed *simultaneously* with the Form I-212 with the American consul having jurisdiction over the alien's place of residence. The consul must forward these forms to the appropriate Service office abroad with jurisdiction over the area within which the consul is located.

Emphasis added.

The AAO finds that since there is no evidence that the applicant filed his Form I-212 and Form I-601 simultaneously with the American consul having jurisdiction over his place of residence, that the applicant's Form I-212 was not properly filed. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.