

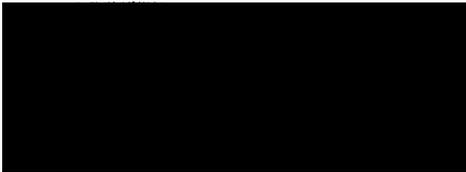
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

Administrative Review related to
prevention of deportations
invasion of personal privacy



U.S. Citizenship
and Immigration
Services



H4

MAR 02 2005

FILE:

Office: ATHENS, GREECE

Date:

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal was denied by the Officer in Charge, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The Officer in Charge's decision will be withdrawn and the matter remanded to him for further consideration and action.

The applicant is a native and a citizen of Lebanon who applied for admission into the United States on December 18, 1990, at the Detroit, Michigan Port of Entry. The applicant was found inadmissible pursuant to section 212(a)(19) (now 212(a)(6)(C)(i)) of the Immigration and Nationality Act (the Act), for having attempted to procure admission into the United States by fraud or willful misrepresentation of a material fact and section 212(a)(20) (now 212(a)(7)(A)(i)(I)) of the Act, for being an immigrant not in possession of a valid immigrant visa or lieu document. The applicant was served with a Order to Show Cause for a hearing before an Immigration Judge pursuant to section 235(b)(1) of the Act 8 U.S.C. § 1225(b)(1). The applicant was permitted to return to Canada to wait for a scheduled date for her deportation hearing. On October 26, 1993, the applicant failed to appear for a deportation hearing and she was subsequently ordered deported in absentia by an Immigration Judge. On December 10, 2002, the applicant was interviewed for an immigrant visa at the Consulate Section at the American Embassy in Nicosia, Cyprus, based on an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen daughter. The applicant was found inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). She 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) and 212(i) of the Act, 8 U.S.C. § § 1182(i) in order to travel to United States and reside with her Lawful Permanent Resident (LPR) spouse and her adult children.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that is signed by the applicant's daughter but does not indicate if the individual mentioned on the Form G-28 is an accredited representative. Therefore the AAO will not be sending a copy of the decision to the individual mentioned on the Form G-28, but this office will accept the submitted information.

The AAO finds several errors in the Officer in Charge's decision. On an attachment to the Notice of Denial (Form I-292) it is stated: "Application: Application for Permission to Reapply for Admission into the United States after Deportation or Removal (I-212)." In his decision the Officer in Charge states that the applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, which relates to aliens previously removed from the United States and required to apply for permission to reapply for admission, but in his discussion he cites section 212(a)(9)(B) of the Act which relates to aliens unlawfully present in the United States. He then notes that "INA § 212(a)(9)(B)(v) states that a waiver is authorized for this ineligibility under INA § 212(i) . . ." but then cites section 212(a)(9)(B)(v) of the Act. The Officer in Charge's final order states: ". . . Application for Waiver of Grounds of Excludability for Inayat Sinno Ghandour be denied." *See Officer in Charge's Decision* dated August 29, 2003.

On appeal it is stated that the applicant has not been in the United States for 13 years and therefore she is not subject to the 10-year bar. It is further stated that the applicant's entire family resides in the United States, her husband is a LPR, and her isolation constitutes an extreme hardship. In addition it is stated that in the late 1980's and early 1990's the applicant was experiencing incredible emotional duress due to her husband's battle with cancer. Finally on appeal it is stated that the applicant is very sorry and deeply regrets her past actions.

Before the AAO review the merits of the appeal it must first determine if the applicant is inadmissible under section 212(a)(9)(A)(i) of the Act.

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

(A) Certain alien 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.

(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 has consented to the aliens' reapplying for admission.

As noted above, the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) initiated deportation proceedings against the applicant upon her arrival in the United States on December 18, 1990. On the same day she was permitted to return to Canada in order to wait for her hearing before an Immigration Judge. The record of proceeding reveals that the applicant was paroled into the United States on March 27, 1991, pending an exclusion hearing. There is no record regarding the applicant's date of departure from the United States. If the applicant is able provide documentary evidence that she remained outside the United States for five consecutive years after her order of deportation and prior to her application for an immigrant visa she will not need to file a Form I-212.

In view of the foregoing, the Officer in Charge's decision will be withdrawn and the record will be remanded to him in order to review all materials in the record to determine if the applicant is required to file a Form I-212. If it is found that she must file the Form I-212, the OIC is to produce a new decision that properly adjudicates the Form I-212 under section 212(a)(9)(A) of the Act. If adverse to the applicant, the decision and all related materials in the record shall be certified to the AAO for review

The AAO notes that the applicant has been found inadmissible into the United States pursuant to section 212(a)(6)(C)(i) of the Act. The proceeding in the present case is for the application for permission to reapply for admission into the United States after deportation or removal and therefore the AAO will not discuss the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

ORDER: The Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.