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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: Manila Date: JUN 24 2003

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:

[redacted]

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Officer in Charge, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Philippines who was found to be inadmissible to the United States by a consular officer under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). The record is unclear how the applicant initially entered the United States.

The applicant was granted lawful permanent residence on a conditional basis on September 30, 1996. The applicant and his wife, [redacted] filed a Petition to Remove Conditions on Residence (Form I-751) but failed to appear for two scheduled interviews. Corazon withdrew her name from the petition and the applicant's status was terminated. A Notice to Appear was served by certified mail on October 4, 1999. The applicant failed to appear for a hearing on February 7, 2000, and he was ordered removed *in absentia*. He departed the United States, thereby self-deporting, on March 19, 2001. Therefore he is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii).

On April 1, 2001 the applicant was present in the United States again without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). On June 27, 2001, the order of removal was reinstated pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5). The applicant again self-deported on August 12, 2001, and appeared at the U.S. Embassy in Manila on August 21, 2001.

The applicant is the beneficiary of an approved Petition for Alien Fiancé(e) and 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).

The officer in charge determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly.

On appeal, counsel states that the applicant entered the United States in 1985 and his marriage to his first wife ended in March 1995, 10 years after entry into the United States. Counsel asserts that the 10-year-period shows that his intention to enter the United States was not for the sole purpose of obtaining a green card. Counsel states that the applicant left the United States in October 2000 to return to the Philippines due to his father's death. He did not have an Alien Registration Card so he was issued a "transportation letter" by the Bureau office in Manila dated October 11, 2000, assuring the airline that he could be transported to the United States without penalty. Counsel states that there is no difference between the case in *Matter of Acosta*, 14 I&N Dec. 361 (D.D. 1973), and the present case.

Section 212(a)(6)(B) of the Act provides that:

> Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

On July 20, 2001, an immigration judge reviewed the applicant's motion to reopen and specifically discussed whether the applicant was properly notified of the hearing scheduled for February 7, 2000. The immigration judge concluded that the applicant had been properly notified and his *in absentia* removal order was appropriate. The AAO is bound by that decision. Therefore, the applicant is also inadmissible under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B).

The alien must have been subsequently removed, or must have departed the United States in order for the section 212(a)(6)(B) ground of inadmissibility to apply. The Bureau has determined that section 212(a)(6)(B) of the Act does not apply to an alien who was placed in a deportation proceeding or an exclusion hearing prior to April 1, 1997, for failure to attend the removal hearing, even if it was not scheduled until after April 1, 1997. The applicant was placed in removal proceedings on October 4, 1999, when the Notice to Appear was issued.

The record reflects that the applicant is inadmissible to the United States under section 212(a)(6)(B) of the Act for failure to attend his removal proceeding and without reasonable cause. No waiver of such ground of inadmissibility is available for an alien seeking admission to the United States within five years of such alien's subsequent departure or removal. The applicant departed the United States on August 12, 2001, and inadmissibility under section 212(a)(6)(B) will remain in effect until August 11, 2006. At the present time, the applicant is mandatorily inadmissible to the United States, and no purpose would be served in granting the application.

Although the applicant was not found to be inadmissible under section 212(a)(6)(B) of the Act by the consular officer, the immigration judge's decision of July 20, 2001, and case law bind the AAO.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant 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 Attorney General's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.