



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 15760158

Date: APR. 14, 2022

Appeal of Los Angeles, California Field Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant seeks permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), because he will be inadmissible upon departing from the United States for having been previously ordered removed. *See* section 212(a)(9)(A)(ii) of the Act. Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion.

The Director of the Los Angeles, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the Applicant did not meet the statutory threshold requirements and ultimately denied the application as a matter of law. On appeal, the Applicant asserts that the Director's decision was in error. We review the questions raised in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for further proceedings.

On appeal, the Applicant contends that "there are no statutory threshold requirements for filing a Form 212 that he has failed to meet" and that the Director erred by failing to appropriately consider and weigh the submitted evidence.<sup>1</sup> As explained by the Applicant, he is currently in the United States and seeks permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before he departs.<sup>2</sup> As noted above, because he has an outstanding order of removal, he will be inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure from the United States.<sup>3</sup>

Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a

---

<sup>1</sup> We also note that the Director stated that the submitted statements regarding hardship "were not supported by corroborative evidence of extreme hardship." However, extreme hardship to a qualifying relative is not a requirement for permission to reapply for admission.

<sup>2</sup> The approval of his application is conditioned upon departure from the United States and would have no effect if the Applicant does not depart.

<sup>3</sup> The record indicates that the Applicant entered the United States in 1989 without being inspected, admitted, or paroled. On July 28, 1998, he withdrew a subsequently filed Form I-589, Application for Asylum and Withholding of Removal, and was granted voluntary departure from the United States on, or before [ ] 1999. The Applicant did not depart and continues to reside in the United States.

matter of discretion. *Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *Matter of Tin*, 14 I&N Dec. 371, 373-74 (Reg'l Comm'r 1973). The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

Here, we find it appropriate to remand the matter to the Director to determine whether the Applicant warrants a favorable exercise of discretion.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.