U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16389134

Date: APR. 27, 2022

Appeal of Nebraska Service Center Decision

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

The Applicant will be inadmissible upon her departure from the United States for having been previously ordered removed and seeks approval of her application for permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The Director of the Nebraska Service Center denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the Applicant did not have a pending adjustment of status application in the United States or an immigrant visa application with the U.S. Department of State (DOS) and is therefore not eligible to file a Form I-212 application. Upon *de novo* review, we will adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments rescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

The record shows that the Applicant entered the United States without inspection in [redacted] and [redacted] 2002 and was ordered expeditiously removed each time. In 2004 the Applicant made another entry without inspection; despite her prior removal orders, she does not claim to have departed the United States after her entry in 2004.[1] We recognize that individuals who currently reside in the United States may seek conditional approval of a Form I-212 prior to their departure from the United States under

[1] In a supporting statement, the Applicant described her current circumstances, which include her marriage to a U.S. citizen in 2010. The Applicant stated that she and her spouse "will suffer irreparable physical, emotional, financial, and personal hardships" if she is "forced to depart" the United States. Further, while the Applicant's family in the United States may be negatively affected if she must depart the United States and remain abroad for the entire inadmissibility period, any hardships to the Applicant's spouse would have diminished weight in a discretionary analysis because her marriage occurred after she was ordered removed in 2002. *See Garcia-Lopes v. INS*, 923 F.2d 72, 74 (7th Cir. 1991) (less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408, 416 (BIA 1998), need not be accorded great weight by the director in a discretionary determination).

the regulation at 8 C.F.R. § 212.2(j). However, the record in this instance does not show that the Applicant intends to apply for an immigrant visa and that she is seeking conditional permission to reapply for admission prior to departing the United States.

As noted in the Director's decision, the record contains two payment receipts with immigrant visa (IV) case numbers. These receipts indicate that the Applicant sought to file an IV at some point. However, the IV payment receipt instructions indicate that payment of the required visa fee is not evidence that an IV application had been filed. Namely, the first prong of the instructions provides the prospective visa applicant with a website for submitting the visa application and states that once the required fee is paid, "[e]ach applicant must complete and submit an Online Immigrant Visa and Alien Registration Application (DS-260)." The Applicant provided no evidence showing that she followed through with these instructions and proceeded to file an IV application; nor did the Applicant provide evidence that she intends to leave the United States.

In addition, we note that the Applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, for having been ordered removed and subsequently reentering the United States (in 2004) without being admitted. As a result of inadmissibility on this ground, the Applicant would need to meet the requirements for admission under section 212(a)(9)(C)(ii) of the Act, which states that the Applicant will not be permitted to file a Form I-212 until she has remained outside the United States for 10 years subsequent to her departure. As noted above, the record contains no evidence that the Applicant departed the United States after she entered without inspection in 2004.

Under the circumstances, we agree with the Director's determination that the Form I-212 application is not ripe for review. Accordingly, despite the Applicant's arguments on appeal that the Director abused his discretion by issuing a denial without weighing the favorable and unfavorable equities in this case, we find that no purpose would be served in adjudicating the application for permission to reapply at this time.

ORDER: The appeal is dismissed.