U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19216704

Date: APR. 29, 2022

Appeal of Los Angeles, California Field Office Decision

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

The Applicant seeks conditional 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.

The Director of the Los Angeles Field Office denied the application. The Director concluded that the Applicant had not provided information necessary for the processing of the application.

The matter is now before us on appeal. On appeal, the Applicant establishes that he submitted the requested information.

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 for the entry of a new decision consistent with our analysis below.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen who has been ordered removed, or who departed the United States while an order of removal was outstanding, is inadmissible for 10 years after the date of departure or removal.

A noncitizen found inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act if, prior to the date of the re-embarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

II. ANALYSIS

The Applicant entered the United States without admission in March 1991, and was granted voluntary departure in [redacted] 1998. When he failed to depart, the grant of voluntary departure automatically became an order of removal. Since 1999, the Applicant has held Temporary Protected Status. In

2016, he married a U.S. citizen, who then filed an immigrant relative petition on his behalf. The Applicant has filed a Form I-212 application because the order of removal makes him ineligible to adjust to lawful permanent resident status in the United States.

The record establishes that the Applicant currently resides in the United States and is seeking conditional approval of the application under the regulation at 8 C.F.R. § 212.2(j) before he departs, because he will be inadmissible upon his departure due to his prior removal order. The approval of the application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if he fails to depart. After departing the United States, the Applicant would pursue an immigrant visa application at a U.S. Embassy or U.S. Consulate abroad.

Among the information requested on the Form I-212 application are the location of the U.S. Embassy or U.S. Consulate where the Applicant intends to apply for an immigrant visa, and "The Department of State (DOS) Consular Case Number (if available)." On his application, the Applicant stated that he intends to apply for an immigrant visa at the U.S. Embassy in Tegucigalpa, Honduras, but he did not provide the Consular Case Number.

In December 2020, the Director requested evidence to show that the Applicant has "a pending application for an immigrant visa." The Director denied the application in April 2021, stating that the Applicant did not respond to the request, and "did not provide the Department of State Consular Case Number" associated with his immigrant visa application. In the absence of such a number, the Director concluded that the Beneficiary is "not an applicant [for an] immigrant visa," and therefore there is no basis to proceed with the adjudication of the Form I-212 application.

On appeal, the Applicant maintains that he submitted a timely response to the Director's December 2020 request. The record confirms this assertion, showing a response dated December 22, 2020, with an envelope postmarked the next day, stamped "Received" by the Los Angeles Field Office on December 29, 2020. In that response, the Applicant stated that his approved immigrant petition "was transferred to the National Visa Center and assigned [a] case number." The response included documentation from the National Visa Center, including the case number.

The Applicant asserts, and we agree, that he has overcome the stated basis for denial. Therefore, we are remanding the matter for the Director to adjudicate the application on the merits.

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