U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16086230

Date: AUG. 5, 2022

Appeal of Hartford Field Office Decision

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

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

The Director of the Hartford, Connecticut Field Office denied the application, concluding that because the Applicant was also inadmissible under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend a deportation hearing and for which no waiver is available, he did not merit conditional permission to reapply for admission as a matter of discretion. On appeal, the Applicant contends that he is not inadmissible under section 212(a)(6)(B) of the Act and asserts that the Director did not adjudicate the merits of the waiver application.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision.

I. LAW

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides, in part, that a foreign national, other than an "arriving alien," who has been ordered removed under section 240 or any other provision of law, or who departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such departure or removal, is inadmissible.

Foreign nationals 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) if, prior to the date of the reembarkation 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 foreign national's reapplying for admission.

The Applicant currently resides in the United States and is seeking conditional approval of his application pursuant to 8 C.F.R. § 212.2(j) before departing, as he will be inadmissible upon his departure due to his prior deportation order. The approval of his 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.

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 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 (Reg'l Comm'r 1973); *see also Matter of Lee, supra,* at 278 (finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character, and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience").

II. ANALYSIS

The issues presented on appeal are whether the Applicant, upon his departure from the United States, would be inadmissible under section 212(a)(6)(B) of the Act, and whether he merits conditional approval of his application as a matter of discretion. The Applicant does not contest that upon his departure from the United States, he will become inadmissible under section 212(a)(9)(A)(ii) of the Act.

The Director found that the Applicant would be inadmissible upon his departure under section 212(a)(6)(B) of the Act for failing to attend his removal hearing. While the record reflects that the Applicant did not attend his hearing on [redacted] 1997, we note that section 212(a)(6)(B) of the Act does not apply to a foreign national who was placed in deportation proceedings prior to April 1, 1997. The record reflects that the Applicant was issued Form I-221, Order to Show Cause and Notice of Hearing, in [redacted] 1997 and served with the Executive Office of Immigration Review a few days later, placing him in deportation proceedings. Accordingly, we find that the Applicant is not inadmissible under 212(a)(6)(B) of the Act.

As the Director's decision to not favorably exercise his discretion was based on the finding of inadmissibility under section 212(a)(6)(B) of the Act (a finding that we have determined was made in error), we will return the matter to the Director to determine whether the application merits approval as a matter of discretion.[1]

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

[1] The record also contains an unadjudicated Form I-601, Application for Waiver of Grounds of Inadmissibility, seeking to waive his inadmissibility for misrepresentation under section 212(a)(6)(C)(i) of the Act.