U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13438004

Date: AUG. 8, 2022

Appeal of Oakland Park, Florida 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). The Director of the Oakland Park, Florida Field Office denied the application, concluding that the negative factors in the Applicant's case outweighed the positive factors. The matter is now before us on appeal.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal as moot.

I. LAW

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any noncitizen, other than an "arriving alien" described in section 212(a)(9)(A)(i), who "has been ordered removed . . . or 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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible."

Noncitizens 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 reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

II. ANALYSIS

The issue on appeal is whether the Applicant is inadmissible under 212(a)(9)(A)(ii) of the Act.

The Applicant entered the United States without inspection in [redacted] 2004. He was subsequently apprehended by immigration officials and served a Notice to Appear (NTA). The Applicant did not attend his removal hearing and was ordered removed by an Immigration Judge in absentia in

[redacted] 2004. The Applicant has since remained in the United States. In September 2019, the Applicant filed the instant application seeking permission to apply for admission under 8 C.F.R. § 212.2(j) before leaving the United States since his departure will trigger inadmissibility under section 212(a)(9)(A)(ii) of the Act due to his unexecuted removal order. The Director denied the application based on discretion concluding that the negative factors in the Applicant's case outweighed the positive factors. The Applicant appealed the Director's decision.

Upon review of the record, we issued a notice of intent to dismiss (NOID). We noted that upon departure, the Applicant would also become inadmissible under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B). Section 212(a)(6)(B) of the Act provides that any noncitizen "who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine 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." There is no waiver for this inadmissibility. We notified the Applicant that the record does not demonstrate "reasonable cause" for failing to appear at his removal hearing.

In response to the NOID, the Applicant submits evidence that in [redacted] 2022, an Immigration Judge granted his motion to reopen his removal proceedings due to insufficient NTA and his next hearing is scheduled for [redacted] 2023. Because the Applicant's removal order is vacated, he is not inadmissible under section 212(a)(9)(A)(ii) of the Act, and the Form I-212 is not necessary.[1] We will dismiss the appeal as moot.

ORDER: The appeal is dismissed.

[1] Director erroneously states the Applicant was ordered removed under section 212(a)(6)(C)(i) of the Act, but correctly cites section 212(a)(9)(A) of the Act.