U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21841602

Date: AUG. 26, 2022

Appeal of Nebraska Service Center Decision

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

The Applicant, a native and citizen of St. Kitts and Nevis, 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). U.S. Citizenship and Immigration Services (USCIS) may grant permission to reapply for admission to the United States in the exercise of discretion for those who establish their eligibility.

The Director of the Nebraska Service Center issued a request for evidence (RFE) seeking evidence that the Applicant was an applicant for a visa with the U.S. Department of State and had been found inadmissible, an applicant for adjustment of status, or requesting to be conditionally granted consent to reapply for admission prior to his departure from the United States. The Applicant did not respond to the RFE. The Director subsequently denied the Form 1-212 as a matter of discretion, indicating that approval would not serve any purpose and explaining that the Applicant had not established that he is an applicant for an immigrant visa with the U.S. Department of State who has been interviewed by a consular officer and found inadmissible.

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. The Applicant submits additional evidence and reasserts his eligibility for the benefit sought.[1] Upon *de novo* review, we will dismiss the appeal

I. LAW

An "arriving alien" who has been ordered removed under section 235(b)(l) of the Act or at the end of proceedings under section 240 initiated upon the arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years 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. Section 212(a)(9)(A)(i) of the Act.

[1] The Applicant submits an appeal statement, a copy of the Form I-130, Petition for Alien Relative receipt notice, a partial copy of his passport from St. Kitts and Nevis, a copy of business licenses for his barbershop from 2018 and 2019, and letters of support from a friend and previous employer. In his appeal statement, the Applicant references the receipt notice and asserts that he is awaiting his consular interview at the U.S. Consulate in Bridgetown, Barbados.

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) 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 [noncitizen's] reapplying for admission."

II. ANALYSIS

The only issue on appeal is whether the Applicant is eligible for permission to reapply for admission into the United States. As discussed below, because the Applicant was convicted of possession of cocaine with intent to sell, a controlled substance violation, we conclude that the Applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), and is ineligible for a waiver of this ground of inadmissibility. Consequently, we will dismiss the appeal of the denial of his request for permission to reapply for admission as a matter of discretion, as he would remain inadmissible even if he were granted permission to reapply.

A. Inadmissibility

The Applicant has been found inadmissible under section 212(a)(9)(A) of the Act for having been previously ordered removed and convicted of an aggravated felony. Specifically, the record reflects that the Applicant was admitted to the United States in August 1979 as a lawful permanent resident. In [redacted] 2004, the Applicant was convicted in the [redacted] Judicial Circuit Court in [redacted] Florida for, among other things, possession of cocaine with intent to sell in violation of sections 893.03(2)(a)(4) and 893.13(1)(a)(1) of the Florida Statutes Annotated (Fl. Stat. Ann). As a result of the conviction, the Applicant was ordered removed in [redacted] 2005, as an aggravated felon, and he departed the United States pursuant to that removal order in [redacted] 2006.

Section 212(a)(2)(A) of the Act states, in pertinent part:

> (i) In General
>
> [Any noncitizen] convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (II) A violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802) ... is inadmissible.
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> . . .

Individuals found inadmissible for a controlled substance violation under section 212(a)(2)(A)(i)(II) of the Act may seek a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), only if the conviction relates to a single offense of simple possession of 30 grams or less of marijuana. Here, the Applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, and since he was convicted of possession of cocaine, he is ineligible for a waiver under section 212(h) of the Act.

Furthermore, the record reflects that the Applicant was convicted of an aggravated felony under section 101(a)(43)(B) of the Act as his offense relates to the illicit trafficking in a controlled substance, as described in section 102 of the Controlled Substances Act and section 924(c) of Title 18, United States Code. Section 212(h)(2) of the Act provides that no waiver shall be granted to a noncitizen who has previously been admitted to the United States as lawfully admitted for permanent residence if, since the date of such admission, the noncitizen has been convicted of an aggravated felony. The Applicant was convicted of an aggravated felony after his 1979 admission to the United States as a lawful permanent resident, and even if he was otherwise eligible to seek a waiver under section 212(h) of the Act, he is permanently barred from obtaining such a waiver pursuant to section 212(h)(2) of the Act.

B. Permission to Reapply

An application for permission to reapply for admission is denied, in the exercise of discretion, to an individual who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964). Here, the Applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for his conviction for possession of cocaine with intent to sell, and he is not eligible for a waiver of inadmissibility. As the Applicant is permanently inadmissible to the United States and ineligible for a waiver of inadmissibility, we will deny his request for permission to reapply as a matter of discretion as no purpose would be served in granting the application.

III. CONCLUSION

The Applicant has the burden of proof in seeking permission to reapply for admission. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met that burden. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.