U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19123216

Date: DEC. 02, 2022

Appeal of Newark, New Jersey Field Office Decision

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

The Applicant seeks advance 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 Newark, New Jersey Field Office denied the Form 1-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, as a matter of discretion, concluding that the favorable factors did not outweigh the unfavorable factors in the case. The matter is now before us on appeal.

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. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides in relevant part that any noncitizen 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 a noncitizen convicted of an aggravated felony) is inadmissible. Noncitizens who are 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 contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

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 is warranted as a matter of discretion. *Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978).

II. ANALYSIS

The record reflects that the Applicant was ordered removed in [redacted] 2004 and that he was removed from the United States on [redacted] 2012. As discussed, section 212(a)(9)(A)(ii) of the Act provides that any noncitizen 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, is inadmissible. However, as of the date of this adjudication, the Applicant has been outside the United States for more than 10 years. Therefore, the Applicant is no longer inadmissible under section 212(a)(9)(A)(ii) of the Act and further pursuit of this Form I-212 is now moot.

ORDER: The appeal is dismissed.