U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20584675

Date: DEC. 5, 2022

Appeal of Chatsworth, California 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 Chatsworth, California Field Office denied the application as a matter of discretion. The matter is now before us on appeal. On appeal, the Applicant asserts that the Director erred in denying the application. It is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions 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 dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides in relevant part 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. . . . 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) 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 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 of the application is warranted as a matter of discretion. *See Matter of Lee,* 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978).

II. ANALYSIS

The Applicant does not dispute that he entered the United States without inspection in the 1980s and was subsequently ordered removed in 2014. Despite having been ordered removed from the United

States, he has remained in the United States. Therefore, the Applicant will trigger inadmissibility under section 212(a)(9)(A)(ii) of the Act upon his departure.

The Director denied the application as a matter of discretion, concluding that the negative factors in this case outweighed the positive equities. On appeal, the Applicant asserts that the Director did not properly weigh the positive and negative factors when denying the application. However, based on our review of the record we have identified another basis for denial in this matter that is dispositive of the Petitioner's appeal.[1]

The Applicant currently resides in the United States and previously asserted that he is seeking conditional approval of his application under the regulation at 8 C.F.R. § 212.2(j) before departing the United States to apply for an immigrant visa with the United States Department of State (DOS). 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.

For the following reasons we determine the record does not establish that the Applicant has an immigrant visa application pending with DOS. The Applicant's U.S. citizen spouse filed a Form I-130 immigrant petition on his behalf, which was initially approved in September 2019 and sent to DOS for immigrant visa processing abroad. Later, DOS returned the petition to USCIS because page 7 of the petition was missing. USCIS issued a request for evidence asking the Applicant's spouse to provide the missing document. USCIS reaffirmed the approval of the petition after receiving the document and returned the petition to DOS in March 2020.

On appeal, the Applicant emphasizes that he "applied for a family petition through his United States citizen [spouse]," but he does not indicate that he intends to depart the United States to apply for an immigrant visa abroad. Further, our review of DOS records does not confirm that he presently has a visa application pending with DOS in order to obtain an immigrant visa for admission to the United States. Therefore, we conclude that no purpose would be served in adjudicating his application for permission to reapply for admission. The appeal of the denial of the application will therefore be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.

[1] Since this identified basis for denial is dispositive of the Applicant's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether the Director erred in denying the application. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).