



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 21518813

Date: JULY 1, 2022

Appeal of Nebraska Service Center 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 Nebraska Service Center denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the Applicant did not establish eligibility for permission to reapply because the record does not demonstrate that he is an applicant for an immigrant visa who has been found inadmissible by a consular officer. The Applicant filed an appeal of that decision with this office. We review the questions raised 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 remand the matter to the Director for further proceedings.

The record before the Director was unclear as to whether the Applicant was seeking conditional permission to reapply before departing the United States or was outside the United States applying for an immigrant visa. On appeal, the Applicant specifies 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 seek an immigrant visa at a U.S. consulate abroad.¹ Because the Applicant is in the United States and requesting conditional permission to reapply for admission, his Form I-212 should be forwarded to the USCIS Field Office with jurisdiction over his place of residence for adjudication, as the Nebraska Service Center has jurisdiction over a Form I-212 only when filed by an immigrant visa applicant who is residing abroad and has been found inadmissible by the U.S. Department of State.

In addition, although not addressed by the Director, the Applicant does not appear to have ever been ordered removed, and therefore, the Form I-212 may be unnecessary. The record indicates that in [] 1999, [] 2003, [] 2004, and [] 2005, the Applicant was apprehended upon attempting to enter the United States without inspection and voluntarily returned to Mexico.² The Applicant

¹ The regulation at 8 C.F.R. § 212.2(j) provides that an alien whose departure will execute an order of removal may, prior to leaving the United States, seek conditional approval of an application for permission to reapply for admission.

² Certain noncitizens found inadmissible at a port of entry, apprehended near the border, or who are otherwise potentially removable, may be offered the opportunity to voluntarily return to their home country in lieu of formal removal. Generally, noncitizens accepting an offer of voluntary return waive their right to a hearing, remain in custody, and, if applicable, agree to depart the United States under supervision.

claims to have entered the United States without inspection at an unknown date in 2005 and has not departed since his entry.

We will remand the matter to the Director to reconsider, in the first instance, whether the Applicant is inadmissible under section 212(a)(9)(A) of the Act, and if so, issue a new decision regarding the Applicant's eligibility for conditional permission to reapply for admission. As always 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.

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