U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 20338650

Date: JUL. 5, 2022

Appeal of Los Angeles, California Field Office Decision

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

The Applicant will be inadmissible upon his departure from the United States for having been previously ordered deported and 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 Los Angeles, California Field Office denied the application in the exercise of discretion. The Director determined that the Applicant would be inadmissible upon his departure from the United States under section 212(a)(6)(B) of the Act, for failing to attend deportation proceedings, and there is no waiver for this ground of inadmissibility.

On appeal, the Applicant asserts that the Director incorrectly found that he is inadmissible under section 212(a)(6)(B) of the Act. The Applicant also contends that he merits a favorable exercise of discretion.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This office reviews 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, as explained below, we will remand the matter to the Director for the entry of a new decision.

## I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, other than an "arriving alien," who has been ordered removed under section 240 of the Act, 8 U.S.C. § 1129a, or any other provision of law, or who 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.

The Applicant currently resides in the United States and is seeking conditional approval of the application under the regulation at 8 C.F.R. § 212.2(j) before he departs, as he will be inadmissible upon his departure due to his 1995 deportation order. 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.

Section 212(a)(6)(B) of the Act renders inadmissible any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the noncitizen's inadmissibility or deportability and who seeks admission to the United States within five years of such noncitizen's subsequent departure or removal.

## II. ANALYSIS

The issue presented on appeal is whether the Applicant is eligible to obtain conditional approval of his application for permission to reapply in the exercise of discretion. As explained below, we will remand the matter to the Director for the entry of a new decision.

In the decision to deny the Applicant's request for conditional approval of his application for permission to reapply in the exercise of discretion, the Director determined that the Applicant would become inadmissible upon his departure from the United States for a period of five years under section 212(a)(6)(B) of the Act, for failing to attend his deportation proceedings. Under such circumstances, the Director concluded that no purpose would be served in determining whether the Applicant merited approval of his application as a matter of discretion.

We find that the Director erred in finding that upon departure from the United States, the Applicant would be statutorily inadmissible to the United States pursuant to section 212(a)(6)(B) of the Act. In the instant case, an Order to Show Case was issued to the Applicant in [redacted] 1995. Section 212(a)(6)(B) of the Act does not apply to an individual placed in deportation proceedings before April 1, 1997.[1]

Considering the Applicant will not become inadmissible to the United States upon departure pursuant to section 212(a)(6)(B) of the Act, we find it appropriate to remand the matter for the Director to reevaluate the submitted evidence and consider whether the Applicant has established that he merits a favorable exercise of discretion.

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

[1] *See* 22 CFR § 40.62, Failure to attend removal proceedings. "An alien who without reasonable cause failed to attend, or to remain in attendance at, a hearing initiated on or after April 1, 1997, under INA 240 to determine inadmissibility or deportability shall be ineligible for a visa under INA 212(a)(6)(B) for five years following the alien's subsequent departure or removal from the United States."