



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 20888759

Date: JUN. 22, 2022

Appeal of Newark, New Jersey Field Office Decision

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

The Applicant will be inadmissible upon her departure from the United States for having been previously ordered removed 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 Newark, New Jersey Field Office denied the application, concluding that the Applicant has not demonstrated that the favorable factors in her case outweigh the unfavorable factors. On appeal, the Applicant submits new evidence and requests a favorable exercise of discretion.

The Applicant bears the burden of proof to demonstrate eligibility 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). We review 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, we will remand the matter to the Director for further proceedings.

The Applicant, a native and citizen of India, entered the United States in January 1992 with a B-2 visitor visa and remained in the United States beyond the authorized timeframe. In [redacted] 1994, the Applicant was issued an Order to Show Cause and Notice of Hearing. In [redacted] 1996, an Immigration Judge granted her a voluntary departure on or before [redacted] 1996, with an alternate order of deportation to India if she does not depart. The Applicant did not depart, triggering the deportation order.¹

The Applicant seeks permission to apply for admission pursuant to 8 C.F.R. § 212.2(j) before leaving the United States as her departure will trigger inadmissibility under section 212(a)(9)(A)(ii) of the Act due to her prior removal order.²

On appeal, the Applicant submits new evidence and asserts that her spouse's physical and mental health have worsened and denying her waiver would cause exceptional hardship to her spouse. Because the Director has not had a chance to review the new evidence, it is appropriate to remand the

¹ The Applicant's subsequent appeal and motions were denied by the Board of Immigration Appeals.

² The approval of her application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if she fails to depart.

matter so that the Director can make the initial determination about the significance and weight of the new evidence.³

Upon remand, the Director may request any additional evidence considered pertinent to the new determination and any other issue to determine in the first instance if the Applicant 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.

³ We note that in denying the case, the Director did not provide a detailed analysis of the evidence and consideration of the favorable and the unfavorable factors in the record.