U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16829377

Date: MAY 06, 2022

Appeal of Kendall, Florida 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 Applicant states her intent to apply for lawful permanent residence as the beneficiary of an approved Form I-130, Immigrant Petition for Alien Relative.

The Director of the Kendall, Florida Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212). The Director observed that the National Visa Center (NVC) informed U.S. Citizenship and Immigration Services (USCIS) that the Applicant's approved immigrant petition had been terminated pursuant to section 203(g) of the Act, 8 U.S.C. § 1153(g), on May 17, 2016. The Director determined that an approved visa petition is necessary for USCIS to approve the Form I-212, emphasizing that without an approved immigrant petition, the Applicant has no basis to pursue lawful permanent residence.

On appeal, the Applicant asserts that NVC must have sent correspondence related to her case to the wrong address and provides an address history for her sister, who filed the Form I-130 on her behalf. She requests that USCIS verify that NVC sent notices related to her Form I-130 and immigrant visa application to the correct address and asserts that the Form I-212 should be adjudicated on its merits because she is eligible for the relief sought.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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 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 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.

II. ANALYSIS

The record reflects that the Applicant entered the United States without inspection on or about September 17, 1992. In [redacted] 1994, her application for asylum and withholding of removal was denied in immigration court and she was placed in removal proceedings. In [redacted] 1998, the Applicant was granted voluntary departure, but did not depart within the timeframe allowed and was ordered removed. The Applicant indicates she has remained in the United States continuously since her unauthorized entry in 1992.

As noted above, the Applicant was the beneficiary of a Form I-130 filed by her sister in April 2001 and approved in June 2003. On the Form I-212, the Applicant indicated her intent to pursue adjustment of status based on this immigrant petition.[1]

Section 203(g) of the Act states, in pertinent part, that the Secretary of State shall terminate the registration of any noncitizen who fails to apply for an immigrant visa within one year following notification to the noncitizen of the availability of such visa, but the Secretary shall reinstate the registration of any such noncitizen who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond their control. The regulation at 8 C.F.R. § 205.1(a)(l) states that an immediate relative petition (Form I-130) is automatically revoked if the Secretary of State terminates the registration of the beneficiary pursuant to section 203(g) of the Act.

As observed in the Director's decision, NVC has advised USCIS that it made multiple attempts to communicate with the Applicant regarding the availability of an immigrant visa between 2010 and 2016, prior to terminating her Form I-130 pursuant to section 203(g) of the Act in May 2016. NVC has further advised that its records reflect that all correspondence sent to the Applicant, the petitioner (the Applicant's sister), and the attorney of record in the matter were returned as undeliverable and the physical file was destroyed upon termination.

While the Applicant objects to the NVC's termination of the approved Form I-130 and suggests that USCIS should make inquiries into the addresses NVC used for correspondence, the outcome of her immigrant petition proceeding is not before us on appeal. The issue before us is whether any purpose would be served in adjudicating the Form I-212 on its merits. The Applicant no longer has a valid immigrant petition that would allow her to seek adjustment of status or apply for an immigrant visa. She is not currently inadmissible under section 212(a)(9)(A)(ii) of the Act because she has not departed the United States after being ordered removed and she has not expressed an intent to depart the United States in order to apply for a visa abroad.

[1] We observe that as the Applicant asserts that she has not departed the United States pursuant to the removal order issued in 1998, the record does not support a finding that she is currently inadmissible under section 212(a)(9)(A)(ii) of the Act for having departed the United States after being ordered removed. The Applicant has not indicated her intent to depart the United States to apply for an immigrant or nonimmigrant visa.

We agree with the Director that, in the absence of an approved immigrant petition, no purpose would be served in granting her application for permission to reapply as it would not result in her ability to apply for an immigrant visa or to adjust her status to that of a lawful permanent resident.[2] The appeal of the denial of the Form I-212 will therefore be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.

[2] We recognize that individuals who currently reside in the United States may seek conditional approval of a Form I-212 prior to their departure from the United States under the regulation at 8 C.F.R. § 212.2(j). As noted, the record fails to establish that the Applicant has a basis to apply for an immigrant visa or that she is otherwise seeking conditional permission to reapply for admission prior to departing the United States.