U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18766222

Date: MAY 6, 2022

Appeal of Los Angeles 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), because he is inadmissible for having been previously ordered removed.

The Director of the Los Angeles Field Office in Los Angeles, California denied the Form I-212, Application for Permission to Reapply for Admission, concluding that the Applicant did not establish a favorable exercise of discretion was warranted.

On appeal, the Applicant contends that the Director denied the petition in error because he miscalculated the date on which a response to the request for evidence (RFE) dated October 5, 2020 was due. According to the Applicant, the Director's January 27, 2021 denial was premature because the RFE response was not due until March 5, 2021. The Applicant requests the opportunity to respond to the deficiencies identified in the RFE. We agree with the Applicant.

To accommodate delays arising from the COVID-19 emergency, U.S. Citizenship and Immigration Services (USCIS) has temporarily expanded multiple filing windows, effective March 30, 2020.[1] USCIS has extended this flexibility several times – many windows have now been extended through July 25, 2022 – but, most relevant for this application, it extended the flexibility period to notices issued before January 1, 2021 on September 11, 2020.[2] The September 2020 news release reads, in part:

> In response to the coronavirus (COVID-19) pandemic, U.S. Citizenship and Immigration Services is extending the flexibilities it announced on March 30, 2020, to assist applicants, petitioners, and requestors who are responding to certain:
>
> - Requests for Evidence;
> - Continuations to Request Evidence (N-14);

[1] *USCIS Expands Flexibility for Responding to USCIS Requests*, https://www.uscis.gov/news/alerts/uscis-expands-flexibility-for-responding-to-uscis-requests (last visited May 5, 2022).

[2] *USCIS Extends Flexibility for Responding to Agency Requests*, https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1 (last visited May 5, 2022).

- Notices of Intent to Deny;
- Notices of Intent to Revoke;
- Notices of Intent to Rescind and Notices of Intent to Terminate regional investment centers;
- Motions to Reopen an N-400 Pursuant to 8 CFR 335.5, Receipt of Derogatory Information After Grant;
- Filing date requirements for Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA); or
- Filing date requirements for Form I-290B, Notice of Appeal or Motion.

. . . .

USCIS will consider a response to the above requests and notices received within 60 calendar days after the response due date set in the request or notice before taking any action. Additionally, we will consider a Form N-336 or Form I-290B received up to 60 calendar days from the date of the decision before we take any action.

The Applicant contends that if a response to an RFE dated October 5, 2020 was originally due January 5, 2021, then this guidance extended the due date to March 5, 2021. Since the Director's denial was several weeks earlier, on January 27, 2021, the Applicant asserts that the application was prematurely denied. While we do not necessarily endorse the Applicant's suggested due date (we question whether the response was actually due March 8, 2021), we agree nonetheless that the Director denied the application prematurely and are therefore remanding for a full adjudication.[3]

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. *Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *Matter of Tin*, 14 I&N Dec. 371, 373-74 (Reg'l Comm'r 1973). The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

We find it appropriate to remand the matter to the Director to review the entire record and determine whether the Applicant merits a conditional approval of his Form I-212 in the exercise of discretion. On remand, the Director shall review and weigh all positive and negative factors with consideration to all evidence presented.

[3] The Director's denial indicated that the Applicant's consular case number was necessary. We note that a consular case number is not required to adjudicate this application.

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