U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19867052

Date: MAY 11, 2022

Appeal of Los Angeles, California Field Office Decision

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

The Applicant seeks conditional 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 she will be inadmissible upon departing from the United States for having been previously ordered removed.

The Director of the Los Angeles, California Field Office denied the application. The Director concluded that the Applicant had not shown that a favorable exercise of discretion is warranted, because the Applicant had not shown that any proceeding was underway by which she could return to the United States.

The matter is now before us on appeal. On appeal, the Applicant states that she is the beneficiary of an immigrant relative petition, and submits a copy of the petition.

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 part, that a noncitizen who has been ordered removed, or who departed the United States while an order of removal was outstanding, is inadmissible for 10 years after the date of departure or removal.

A noncitizen found inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act if, prior to the date of the re-embarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

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 (Reg'l Comm'r 1973); *see also Matter of Lee*, *supra*, at 278 (finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character).

II. ANALYSIS

The Applicant entered the United States unlawfully (without admission or parole) in late 1992. She was placed in removal proceedings in [redacted] 2002, and granted voluntary departure in [redacted] 2003, and notified that, if she did not depart by [redacted] 2003, then the grant of voluntary departure would automatically become an order of removal. The Applicant filed an appeal with the Board of Immigration Appeals. The dismissal of that appeal resulted in a final order of removal in [redacted] 2005. The record contains no evidence that the Applicant departed the United States.

On the Form I-212 application, asked to explain why she seeks permission to enter the United States, the Petitioner stated that her U.S. citizen spouse "will be filling [*sic*] a petition." The Applicant did not provide any further statement or evidence to identify favorable discretionary factors.

The Director denied the application on April 27, 2021. In the denial notice, the Director acknowledged the Applicant's claim that her spouse intends to file an immigrant relative petition on her behalf, but the Director concluded that the Applicant did not have an active immigrant visa application or any basis to file one. The Director also concluded that the Applicant had not departed the United States after being "granted the privilege of voluntary departure in lieu of removal."

On appeal, the Petitioner submits a copy of Form I-130, Petition for Alien Relative. The document identifies the Applicant's U.S. citizen spouse as the petitioner, and the form is signed and dated May 28, 2021, more than a month after the Director denied the Form I-212 application. The Applicant asserts that she mailed the petition to U.S. Citizenship and Immigration Services (USCIS) on June 9, 2021. But the Applicant submits no evidence that the petition was ever filed, and we can find no evidence of filing in USCIS records. Without an approved immigrant petition, the Applicant would have no basis to apply for an immigrant visa.

The Applicant states on appeal that she has no criminal record, and that she hopes to "be able to continue working and continue to pursue her educational goals." Regarding the Applicant's stated desire "to continue working," we note that, on Form I-130A, Supplemental Information for Spouse Beneficiary, the Applicant indicated that she had been a "housewife" since 2015; she identified no prior employer.

The Applicant also claims that she left the United States on January 4, 2004, and returned on June 24, 2006. The Applicant submits no evidence of this claimed departure and re-entry. Government records do not show that the Applicant left the United States in 2004, or that she was admitted or paroled into the United States in 2006. If the Applicant re-entered the United States without being admitted or paroled, then she is permanently inadmissible under section 212(a)(9)(C)(i)(I) of the Act, because she

accrued over one year of unlawful presence in the United States before her departure and unlawful re-entry. Furthermore, if the Applicant unlawfully re-entered the United States in 2006, then she will not be eligible to file a Form I-212 application until after she has remained outside the United States for at least ten years. *See* section 212(a)(9)(C)(ii) of the Act.

The Applicant has not shown that she is eligible for the relief available through filing a Form I-212 application. She has provided minimal information, and no evidence, to establish discretionary factors in her favor. We agree with the Director's denial of the application as a matter of discretion.

ORDER: The appeal is dismissed.