



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 18347276

Date: MAY 16, 2022

Appeal of New York City, New York 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 Director of the New York City, New York Field Office denied the application, stating that the Applicant has not triggered inadmissibility under section 212(a)(9)(A) of the Act because he has not left the United States since being ordered removed. The Director also concluded that the Applicant submitted insufficient evidence to demonstrate that the favorable factors in his case outweigh the unfavorable factors. The matter is now before us on appeal.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *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 record shows that the Applicant, a native and citizen of El Salvador, entered the United States without inspection on or about [REDACTED] 2005. He was subsequently apprehended by immigration officials and served a Notice to Appear. The Applicant did not attend his removal hearing and was ordered removed by an Immigration Judge in absentia on [REDACTED] 2006, but has remained in the United States. The Applicant is a beneficiary of an immigrant visa petition filed by a U.S. citizen spouse and approved in June 2017.

Here, the Applicant may seek conditional approval of the Form I-212 under 8 C.F.R. § 212.2(j) before leaving the United States as his departure will trigger inadmissibility under section 212(a)(9)(A)(ii) of the Act due to his prior removal order.¹ However, we note that the Applicant's departure will also trigger inadmissibility under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for which there is no waiver. Section 212(a)(6)(B) of the Act provides that any noncitizen "who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible." While there is no statutory definition of the

¹ The approval of his 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.

term “reasonable cause” as it is used in this section, guiding USCIS policy provides that “it is something not within the reasonable control of the [applicant].”²

Here, the Applicant was not given an opportunity to demonstrate that he had reasonable cause in failing to attend the hearing. Therefore, we find it appropriate to remand the matter to the Director. If the Director finds that the Applicant had reasonable cause, then the Director should properly weigh the favorable and unfavorable factors presented in the case. In denying the case, the Director listed the evidence presented in the case concluding that it was not sufficient to warrant discretionary waiver but did not provide analysis of the evidence and consideration of the favorable and the unfavorable factors in the record.

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.

² 8 USCIS Policy Manual I, retired Adjudicator's Field Manual Chapter 40.6, <https://www.uscis.gov/policymanual>.