



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 13336833

Date: MAY 17, 2022

Appeal of Dallas, Texas District 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). U.S. Citizenship and Immigration Services (USCIS) may grant permission to reapply for admission to the United States in the exercise of discretion for those who establish their eligibility.

The Director of the Dallas, Texas District Office denied the Form I-212 because the Applicant did not depart the United States after having been ordered removed. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision.

The record reflects that an Immigration Judge denied the Applicant's adjustment of status application and ordered him removed in [] 2013, and the Board of Immigration Appeals (BIA) dismissed his appeal in November 2014. The Applicant does not claim, nor does the record show, that he departed the United States since being ordered removed. Because the Applicant currently resides in the United States and is seeking conditional approval of the application under the regulation at 8 C.F.R. § 212.2(j) before he departs, he will be inadmissible upon his departure due to his prior removal order under section 212(a)(9)(A)(ii) of the Act. The approval of the 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.

Because the Applicant is eligible to apply for a conditional Form I-212 prior to his departure, we are remanding the matter for the Director to adjudicate the application on the merits, including any claims and documentation submitted on appeal. On remand, the Director should also consider whether the Applicant is the beneficiary of an approved relative petition and whether any purpose, as a matter of discretion, would be served in adjudicating his permission to reapply for admission as he may not be eligible for an immigrant visa. The record reflects that USCIS denied three petitions filed by his U.S. citizen spouse, and the denial of the third petition is pending appeal with the BIA.¹ In addition, the Applicant is the beneficiary of an approved relative petition classifying him as the parent of a U.S. citizen. However, USCIS issued a notice of intent to revoke the approval in January 2021, which

¹ The BIA dismissed both prior appeals.

remains pending as of the date of this decision.

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