U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16169410

Date: MAY 18, 2022

Appeal of Baltimore, Maryland Field Office Decision

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

The Applicant will be inadmissible upon his departure from the United States for having been previously ordered removed and seeks advance 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 Baltimore, Maryland Field Office denied the Form I-212, as a matter of discretion, concluding that no purpose would be served in granting conditional approval for permission to reapply for admission because the Applicant, upon his departure, would also become inadmissible under section 212(a)(6)(B) of the Act for failure to appear at his removal proceedings.

On appeal, the Applicant contends that he has established eligibility for the benefit sought. 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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of a noncitizen convicted of an aggravated felony) 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.

Any noncitizen national who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine their inadmissibility or deportability and who seeks admission to the United States within five years of such noncitizen's subsequent departure or removal is inadmissible. Section 212(a)(6)(B) of the Act.

II. ANALYSIS

The record reflects that the Applicant entered the United States without being admitted on [redacted] 2005. On [redacted] 2005, the Applicant was placed in removal proceedings and was personally served with his Form I-862, Notice to Appear, which contained the date, time, and location of his removal hearing in [redacted] Texas. The Border Patrol Agent certified that oral notice was provided in the Spanish language of the time and place of the removal hearing and of the consequences of failing to appear at that hearing.[1] The Applicant signed the Form I-862 and his fingerprint appears on the document as well. However, the Applicant did not appear at his removal hearing on [redacted] 2005, and he was ordered removed to Honduras *in absentia*. *See* section 240(b)(5)(A) of the Act, 8 U.S.C. § 1229a(b)(5)(A) (stating that any individual who does not attend a required hearing "shall be ordered removed in absentia if [the Department of Homeland Security (DHS)] establishes by clear, unequivocal, and convincing evidence that . . . written notice was . . . provided and that the [individual] is removable"). The Applicant remained in the United States and subsequently filed a motion to reopen his removal proceedings in May 2019, which the Immigration Judge denied in June 2019. The Applicant has not departed the United States.

The Applicant filed the Form I-212 in August 2019 seeking conditional approval of the application prior to his departure from the United States under 8 C.F.R. § 212.2(j) (enabling an applicant "whose departure will execute an order of deportation" to seek conditional approval depending upon their "satisfactory departure"). The Director denied the application, concluding that no purpose would be served in granting conditional approval for permission to reapply for admission because the Applicant, upon his departure, would become inadmissible for a period of five years under section 212(a)(6)(B) of the Act for failure to appear at his removal proceedings.

In his appeal brief, the Applicant contends that he intends to apply for an immigrant visa abroad and that the U.S. Department of State (DOS) consular officer will make the final determination regarding his inadmissibility under section 212(a)(6)(B). We acknowledge that, as the Applicant intends to depart the United States and apply for an immigrant visa, DOS will make the final determination concerning his eligibility for a visa, including whether he is inadmissible under section 212(a)(6)(B) of the Act or under any other ground, when he seeks to reenter. However, evidence that the Applicant's departure will trigger inadmissibility under a separate ground for which no waiver is available is relevant to determining whether permission to reapply for admission should be granted as a matter of discretion, as no purpose would be served in granting the application under these circumstances. *See Matter of Martinez-Torres*, 10 I&N Dec. 776, 776-66 (Reg'l Comm'r 1964) (stating that, when the applicant is mandatorily inadmissible to the United States under a provision of the Act, "no purpose would be served in granting" the Form I-212).

The Applicant further argues that he has established reasonable cause for failing to attend his removal hearing in [redacted] 2005. In an unsigned declaration accompanying his Form I-212, the Applicant asserted: (1) He arrived in the United States on [redacted], 2005, and he was detained at the border; (2) Immigration officials gave him a document written in English, but never asked him for an address; (3) He then traveled to [redacted] and eventually rented a house in [redacted] Maryland for "five months"; (4) The house was sold, but the new owner permitted the Applicant to stay and pay

[1] In the "Certificate of Service" part of Form I-862, the Border Patrol Agent indicated that the Applicant "was provided oral notice in the Spanish language of the time and place of his or her hearing and of the consequences of failure to appear."

rent; (5) After a "few months" of renting from the new owner, an individual arrived to remodel the home; (6) The individual accidentally placed a flammable substance in the basement, which caused an explosion; (7) The Applicant heard the explosion and ran out of the house immediately, before the dwelling became engulfed in flames; and (8) The Applicant left all of his possessions in the house, including the document given to him by immigration officials.

Based upon the evidence provided, the Applicant has not demonstrated that he had reasonable cause for not attending his removal hearing. According to the timeline in Applicant's declaration, his removal hearing would have taken place before his immigration document was lost in the explosion and house fire. Furthermore, he did not provide evidence to corroborate his statements regarding the explosion and house fire. There is no statutory definition of the term "reasonable cause" as it is used in section 212(a)(6)(B) of the Act, but U.S. Citizenship and Immigration Services (USCIS) policy provides that "it is something not within the reasonable control of the [applicant]."[2] The evidence in this case does not support the Applicant's contentions that he did not comprehend the immigration document he received and that he was not given an opportunity to provide an address where he could receive notice. Rather, the record shows that, prior to his release on recognizance, the Applicant was served with and signed Form I-862 advising him that he was "required to provide [legacy Immigration and Naturalization Service (INS)], in writing with [his] full mailing address and phone number" using a Form EOIR-33, Change of Address. The Applicant's signed Form I-862 also indicates that he was "provided oral notice in the Spanish language of the time and place of his or her removal hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act." Based upon the evidence, the Applicant has not demonstrated he had reasonable cause to not attend his removal hearing.

The record indicates that the Applicant was ordered removed *in absentia* in [redacted] 2005, and he has not shown reasonable cause for his failure to appear for his removal hearing. An application for permission to reapply for admission is denied, in the exercise of discretion, to a foreign national who is mandatorily inadmissible to the United States under another section of the Act. *Matter of Martinez-Torres,* 10 I&N Dec. at 776-77. Approving the Form I-212 would serve no purpose because the Applicant will become inadmissible under section 212(a)(6)(B) of the Act upon his departure and remain inadmissible for a period of five years.

As the record indicates that the Applicant will become inadmissible upon his departure under section 212(a)(6)(B) of the Act, and there is no waiver available for this ground of inadmissibility, his application for permission to reapply for admission will remain denied as a matter of discretion.

ORDER: The appeal is dismissed.

[2] Memorandum from Lori Scialabba, Associate Director for Refugee, Asylum & International Operations Directorate, et al., USCIS, HQ 70/21.1 AD07-18, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators: Revisions to the Adjudicator's Field Manual* (AFM) *to Include a New Chapter 40.6* (AFM Update AD07-18) (Mar. 3, 2009).