U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17910344

Date: MAY 26, 2022

Appeal of Atlanta, Georgia 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 she will be inadmissible upon departing from the United States for having been previously ordered removed. The Director of the Atlanta, Georgia Field Office denied the application, concluding that permission to reapply for admission would serve no purpose at this time. The Director noted that the Applicant's Form I-485, Application to Adjust Status, was administratively closed due to lack of jurisdiction, and the Applicant has not left the United States, and has not indicated that she will do so in the future. The Director also concluded that the unfavorable factors in the Applicant's case outweigh the favorable factors. The matter is now before us on appeal. On appeal, the Applicant states her Form I-212 application must be approved before she can adjust status and become a lawful permanent resident.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 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 dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any noncitizen, other than an "arriving alien" described in section 212(a)(9)(A)(i), 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 an alien convicted of an aggravated felony) is inadmissible."

Noncitizens 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 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.

II. ANALYSIS

The issue on appeal is whether the Director properly denied the Form I-212. Upon review, we agree with the Director that the Form I-212 is not ripe for review.

The Applicant entered lawfully as a B-2 nonimmigrant in December 1993, and thereafter, she applied for asylum in June 1994. In [redacted] 1999, an Immigration Judge determined that the Applicant was removable and granted a voluntary departure on or before [redacted], 2000, with an alternate order of removal to Bangladesh if the Applicant does not depart. The Applicant did not depart, triggering the removal order.

An immigrant petition filed on the Applicant's behalf by her son was approved in 2017, classifying her as an immediate relative of a U.S. citizen. In September 2018, the Applicant filed the Form I-212 application concurrently with the Form I-485, Application to Register Permanent Residence or Adjust Status. The Applicant's Form I-485 was administratively closed by the Director in July 2019 for lack of jurisdiction due to the Applicant's outstanding removal order. Subsequently, the Director denied the Form I-212, stating that no purpose would be served in adjudicating the application since the Form I-485 was administratively closed and the Applicant has not expressed any intent to depart the United States to pursue consular processing at a U.S. consulate abroad.

On appeal, the Applicant asserts that because she is an applicant for adjustment of status, she must request permission to reapply for entry in conjunction with the Form I-485 and cites 8 C.F.R. § 212.2(e), which states, in part: "An applicant for adjustment of status under section 245 of the Act . . . must request permission to reapply for entry in conjunction with his or her application for adjustment of status."[1]

While the Form I-212 may be filed with the Form I-485, the Applicant is currently not eligible to adjust status. As noted, the Applicant's Form I-485 was administratively closed because U.S. Citizenship and Immigration Services (USCIS) does not have jurisdiction over the Form I-485 due to the Applicant's outstanding removal order. Therefore, there is no pending Form I-485, and the Applicant currently cannot adjust status through USCIS.

The Applicant further states she "is not inadmissible under INA section 212(a)(9)(A) or (C) since she has not actually been removed from or departed the United States." However, the Applicant will become inadmissible upon departure from the United States. A noncitizen may file a conditional Form I-212 application before departing the United States pursuant to 8 C.F.R. § 212.2(j), in anticipation of applying for consular processing of an immigrant visa application abroad. The approval of the Form I-212 under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if the Applicant does not depart. However, in this case, the Applicant does

[1] However, the regulations at 8 C.F.R. § 212.2 apply specifically to "[a]ny alien who has been deported or removed from the United States." 8 C.F.R. § 212.2(a). The Applicant has not shown that the cited provisions apply to an adjustment applicant who has not departed the United States following the removal order, and who does not intend to do so. Rather, the regulations presume that the noncitizen has either departed and returned or will depart.

not indicate that she intends to depart the United States and does not dispute the Director's finding that the Applicant does not intend to depart in the future.

Under the circumstances, we agree with the Director's determination that the Form I-212 application is not ripe for review, and that the Applicant has not shown that future events will warrant consideration of the application.[2] Therefore, we will dismiss the appeal.[3]

ORDER: The appeal is dismissed.

[2] Since the identified basis for denial is dispositive of the Applicant's appeal, we decline to reach and hereby reserve the Applicant's appellate arguments regarding the favorable and unfavorable factors in her case. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

[3] We note that the Applicant also asserts USCIS' jurisdiction over her Form I-485 adjustment application, which the Director administratively closed, citing jurisdictional grounds. The adjustment application, however, is a separate proceeding, over which we have no appellate authority. See 8 C.F.R. § 245.2(a)(5)(ii).