U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22082136

Date: NOV. 2, 2022

Appeal of Los Angeles Field Office Decision

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

The Applicant is currently in the United States and will be inadmissible upon their departure because they have previously been ordered removed and they are seeking permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii). Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion. The Los Angeles Field Office Director denied the Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (application). The Director concluded that the favorable factors did not outweigh the unfavorable factors in the case and denied the application in the exercise of discretion.

The matter is now before us on appeal. The Applicant bears the burden of demonstrating 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*. *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 foreign national, other than an "arriving alien," who has been ordered removed under section 240 of the Act, 8 U.S.C. § 1229a, or any other provision of law, or who 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, is inadmissible. Those found inadmissible under section 212(a)(9)(A) 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 continuous territory, the Secretary of Homeland Security has consented to their reapplying for admission.

Approval of an application 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. *See Matter of Lee*, 17 I&N Dec. 275, 278–79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant a Form I-212 application include the basis for the prior deportation; the recency of deportation; length of residence in the United States; an applicant's moral character; an

applicant's respect for law and order; evidence of an applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to an applicant or others; and the need for an applicant's services in the United States. *See Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973).

Section 212(a)(6)(B) of the Act provides that any foreign 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 their subsequent departure or removal, is inadmissible. There is no waiver for this inadmissibility ground.

II. ANALYSIS

The Applicant entered the United States without inspection, admission, or parole in July 1993, filed for asylum in that same year through a *notario*, and failed to appear at his asylum interview in 1998. The Los Angeles Asylum Office issued a Referral Notice on January 25, 1999, that contains a checked box reflecting the Applicant failed to appear for his interview, and under the "Other reason for Referral" option, the box is not checked but the space next to the box provides: "Your Asylum case has been withdrawn per your request, your case has been forwarded to the Immigration Court."

Also on January 25, 1999, the former Immigration and Naturalization Service (INS) issued a Form I-862, Notice to Appear (NTA) to the address listed on the Applicant's asylum application. The NTA reflected the Applicant was to appear before an Immigration Judge on [redacted] 1999, he did not appear for those proceedings, and the judge ordered him removed from the United States *in absentia*. More than 20 years later, the Applicant filed a motion to reopen his removal proceedings in which he informed the court that he does not recall having received any notice from the court and he did not speak English well so he would not have recognized a notice from the court. An Immigration Judge was not persuaded by his explanation and denied his motion on [redacted] 2019.

As it relates to his asylum application, it appears the Applicant has provided conflicting information within the record. First, in the Applicant's motion to reopen his proceedings before the immigration court, he did not mention a *notario*, nor did he deny possessing any knowledge about the asylum application. But in the appeal brief the Applicant asserts that he hired the *notario* to obtain a work permit, and after submitting a Freedom of Information Act (FOIA) request, he discovered the *notario* had also filed an asylum application on his behalf. Later in the same brief, he provides the "Applicant is the one who abandoned his asylum application. He withdrew the application." If the Applicant was unaware the *notario* had filed an asylum application until he filed the FOIA, it is unclear how he claims that he abandoned and withdrew this same application in 1999; an application that he claims he had no knowledge of.

Moving to the current proceedings, the Applicant filed this application in November 2021 and the Director denied it concluding that the Applicant would become inadmissible under section 212(a)(6)(B) of the Act, for failing to attend removal proceedings without reasonable cause, and there is no waiver for this ground of inadmissibility. The Director reasoned that no purpose would be served

to adjudicate the application on the merits because as soon as the Applicant departed the United States to consular process, he would become inadmissible under section 212(a)(6)(B) for a five-year period.

On appeal, the Applicant provides evidence that he informed the city of [redacted] California that he had moved to a new address, which he surmises should serve as "reasonable cause" for not appearing at his removal hearing. *See* section 212(a)(6)(B) (listing "reasonable cause" as the sole means to mitigate this inadmissibility ground). The Applicant further claims that USCIS does not possess jurisdiction to make a determination as it relates to his failure to attend his removal proceedings under section 212(a)(6)(B).

As it relates to reasonable cause for the Applicant's failure to attend his removal proceedings, we conclude he has not made such a showing. There is no statutory definition of the term "reasonable cause" as it is used in section 212(a)(6)(B), but guiding USCIS policy provides that it "is something not within the reasonable control of the alien." 8 *USCIS Policy Manual* Part I. retired *Adjudicator's Field Manual* Chapter 40.6.2(b)(3)(i), https://www.uscis.gov/policymanual. The Applicant argues the evidence showing he notified the City of [redacted] California that he had moved to a new address "is clear and conclusive evidence that he was not residing at the address where the NTA was mailed and thus he did not have notice . . . . [and] [l]ack of notice is absolutely reasonable for not appearing for removal proceedings."

We do not dispute the Applicant notified the local authorities in [redacted] of his new residential address. Nevertheless, the former INS did not have direct and immediate communications with every locality throughout the United States as it relates to the addresses of foreign nationals, and the Applicant does not address his duty to have informed the immigration authorities of his new address. Further, the Applicant has not demonstrated that informing the former INS of his new address was an act that was not within his reasonable control, as noted above within the USCIS Policy Manual. The Instructions for Form I-589, Application for Asylum and for Withholding of Removal, that were in place when the Applicant filed his asylum application instructed him of his responsibilities if he moved to a different address, as did section 265(a) of the Act and 8 C.F.R. § 265.1 (1988).

The asylum application instructions informed the Applicant that if he moved to an address that was not listed on the asylum application, he must inform the former INS and the asylum office within 10 days on a Form AR-11, Change of Address Form. Even if the Applicant was unaware of the instructions accompanying the asylum application, section 265(a) of the Act provided in pertinent part:

> Each alien required to be registered under this title who is within the United States shall notify the Attorney General in writing of each change of address and new address within ten days from the date of such change and furnish with such notice such additional information as the Attorney General may require by regulation.

The accompanying regulation in existence at the relevant time 8 C.F.R. § 265.1 (1988) stated:

> Except for those exempted by section 263(b) of the Act, all aliens in the United States required to register under section 262 of the Act shall report each change of address and new address within 10 days on Form AR–11. This form is available at post offices and Service offices in the United States. The completed form must be mailed to the

Department of Justice, Immigration and Naturalization Service, Washington, DC 20536.

Based on these provisions, foreign nationals are required to inform the federal immigration authorities of each change of address within 10 days of moving. The Applicant has not offered evidence, nor has he claimed, that he informed the former INS that he had moved from his previous residential address. The absence of probative material demonstrating he satisfied that duty undermines his claims that he has "reasonable cause" for not attending his removal proceeding.

Furthermore, we do not agree with the Applicant's claims that it is outside USCIS' purview to determine inadmissibility under section 212(a)(6)(B), and instead a U.S. Department of State consular officer should make that determination. We note it is proper for USCIS, in the exercise of discretion, to deny a Form I-212 for one who is mandatorily inadmissible to the United States under another section of the Act. *Matter of Martinez-Torres,* 10 I&N Dec. 776, 776–77 (Reg'l Comm'r 1964).

Because the Applicant will depart the United States and apply for an immigrant visa, the U.S. Department of State will make the final determination concerning his eligibility for a visa, including whether the Applicant is inadmissible under section 212(a)(6)(B) or under any other ground. Evidence that the Applicant's departure will trigger inadmissibility under a separate ground for which no waiver is available, however, is relevant to determining whether a Form I-212 should be granted as a matter of discretion, as no purpose would be served in granting the application under these circumstances. *See id.*

The Applicant is inadmissible under a ground that this application cannot either waive or offer an exception. Approving the application would serve no purpose as the Applicant will become inadmissible under section 212(a)(6)(B) for five years upon his departure, and there is no waiver available for this ground of inadmissibility. As a result, his application for permission to reapply for admission will remain denied as a matter of discretion.

ORDER: The appeal is dismissed.