U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23329397

Date: NOV. 29, 2022

Appeal of Long Island, New York Field Office Decision

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

The Applicant seeks approval of her application for permission to reapply for admission to the United States.

The Director of the Long Island, New York Field Office denied the application, concluding that no purpose would be served in approving it because the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (I-485), had been denied concurrently for lack of USCIS jurisdiction. On appeal, the Applicant argues that the Director erred in failing to consider the merits of her application.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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 review, we will remand the matter to the Director for further proceedings consistent with our opinion below.

I. LAW

Section 212(a)(9)(A)(ii) of the Act 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) 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 the noncitizen's reapplying for admission."

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

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

II. ANALYSIS

The Applicant requested permission to reapply for admission to the United States in conjunction with a pending Form I-485 application for adjustment of status. The record reflects that she entered the United States without being inspected, admitted, or paroled on or about October 1996. In [redacted] 1997, an Immigration Judge ordered her removed to El Salvador. However, she never departed. As such, the Applicant appears inadmissible under section 212(a)(9)(A)(ii) and must seek permission to reapply for admission in order to adjust her status to permanent resident. Government records indicate that after El Salvador was designated for Temporary Protected Status (TPS), she filed a TPS application which was approved in 2001. She has maintained her TPS since that time.

In denying the Applicant's Form I-212 application, the Director determined that she was ineligible because USCIS lacked jurisdiction over her Form I-485 adjustment of status application. However, the Director's decision relied on a now-rescinded USCIS policy. *See* https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220701-TPSAndAOS.pdf and https://www.uscis.gov/sites/default/files/document/memos/PM-602-0188-RescissionofMatterofZ-R-Z-C-.pdf.

We, therefore, are remanding the matter because the Director's decision did not contain any analysis of the evidence submitted in support of the Applicant's application for permission to reapply for admission. Instead, the Director denied her I-212 application based on jurisdictional grounds only. As such, the Director's decision is not ripe for our review, and we are remanding the application for the Director to consider the merits of her application.

Consistent with *Matter of Tin*, we note that the Applicant has lived in the United States since October 1996, has maintained TPS since 2001, and has been married to her U.S. citizen spouse since 2009. Additionally, she argues that her spouse would suffer hardship if she was removed to El Salvador because of his medical issues, and because he does not speak Spanish. She also references country conditions information which indicates that El Salvador suffers from significant internal problems that have led to public safety concerns for individuals living there. *See* https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/el-salvador/ (last visited November 29, 2022).

The record also includes negative factors, including the Applicant's noncompliance with her 1997 removal order, and a criminal violation. As such, we express no opinion as to the ultimate resolution of this matter.

III. CONCLUSION

The Director's reliance on a now-rescinded policy necessitates withdrawal of his decision. Furthermore, a remand is warranted so that the Director may properly assess the Applicant's eligibility for permission to reapply for admission and conduct an evaluation of the merits of her application.

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