U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23312080

Date: NOV. 30, 2022

Motion on Administrative Appeals Office Decision

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

The Applicant will be inadmissible upon departing the United States for having been previously ordered removed, and seeks permission to reapply for admission to the United States under Immigration and Nationality Act (the Act) section 212(a)(9)(A)(iii), 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 Director of the Newark, New Jersey Field Office denied the application as a matter of discretion, concluding that upon departure from the United States, the Applicant will become inadmissible under section 212(a)(6)(B) of the Act for failing to attend his removal proceedings, for which there is no available waiver. Thus, the Director determined that even if the I-212 were approved, the Applicant would remain inadmissible, and no purpose would be served in granting conditional approval for permission to reapply for admission. The matter is now before us on a motion to reconsider.

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. Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

Section 212(a)(6)(B) of the Act states that any noncitizen who, without reasonable cause, fails to attend or remain in attendance at their immigration proceeding, and then seeks admission to the United States within five years of their subsequent departure or removal, is inadmissible. There is no waiver for this inadmissibility.

II. ANALYSIS

The Applicant currently resides in the United States and is seeking conditional approval of his application under the regulation at 8 C.F.R. § 212.2(j) before departing the United States to apply for an immigrant visa. The approval of his 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.

As we explained in our prior decision:

> An application for permission to reapply for admission is denied, in the exercise of discretion, to a noncitizen who is mandatorily inadmissible to the United States under another section of the Act. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (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 record reflects that on [redacted] 2005, the Applicant was personally served a Form I-862, Notice to Appear (NTA), indicating a time and date to appear for his immigration hearing. Furthermore, the NTA was personally signed by the Applicant. On [redacted] 2005, after failing to attend his hearing, the Immigration Judge ordered him removed *in absentia*. While there is no waiver for inadmissibility under section 212(a)(6)(B) of the Act, if an individual demonstrates "reasonable cause" for failure to attend his removal hearing, this inadmissibility ground may be waived.

Although there is no statutory definition of the term "reasonable cause" as it is used in section 212(a)(6)(B) of the Act, guiding USCIS policy provides that "it is something not within the reasonable control of the alien." *See* 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). Here, the Applicant has not made any arguments related to his failure to attend his [redacted] 2005, immigration hearing.

Because the Applicant has not established a reasonable cause for failing to attend his immigration hearing or that our reliance on *Matter of Martinez-Torres* was incorrect, our prior decision was not contrary to legal precedent, policy, or the facts.

III. CONCLUSION

The documentation on motion does not establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. §103.5(a)(3). Therefore, the motion to reconsider will be dismissed.

ORDER: The motion to reconsider is dismissed.