



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 20295454

Date: SEP. 12, 2022

Appeal of Nebraska Service Center 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). The Director of the Nebraska Service Center denied the application, concluding that the Applicant failed to establish that she is an applicant for an immigrant visa who has been found inadmissible to the United States by a consular officer. The matter is now before us on appeal.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. See 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 remand the matter to the Director for further proceedings.

The record shows that the Applicant, a native and citizen of Honduras, entered the United States without inspection on or about [redacted] 1999, and she was subsequently apprehended by immigration officials and served a Notice to Appear. The Applicant did not attend her removal hearing and was ordered removed by an Immigration Judge in absentia on [redacted] 2000, but has remained in the United States. The Applicant is a beneficiary of an immigrant visa petition filed by her U.S. citizen sibling and approved in June 2010.¹

On appeal, the Applicant asserts that the Director erred in concluding that she was not an applicant for an immigrant visa and resubmits, among other previously submitted documents, the Form I-797, Notice of Action, indicating the approval of the immigrant visa petition filed on her behalf by her sister. The Applicant also submits receipts for the payments made to the U.S. Department of State (DOS) for the immigrant visa process.²

Here, the record suggests that she is an applicant for an immigrant visa through consular process and may seek conditional approval of the Form I-212 under 8 C.F.R. § 212.2(j) before leaving the United States as her departure will trigger inadmissibility under section 212(a)(9)(A)(ii) of the Act due to her

¹ The Applicant's visa petition has a priority date of November 24, 2006.

² The receipt notices from the DOS contain an IV case number for the Applicant.

prior removal order.³ However, we note that the Applicant's departure will also trigger inadmissibility under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for which there is no waiver. Section 212(a)(6)(B) of the Act provides that any noncitizen "who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible." While there is no statutory definition of the term "reasonable cause" as it is used in this section, guiding USCIS policy provides that "it is something not within the reasonable control of the [applicant]."⁴

The Applicant was not given an opportunity to demonstrate that she had reasonable cause in failing to attend the hearing. Therefore, we find it appropriate to remand the matter to the Director. If the Director finds that the Applicant had reasonable cause, then the Director should properly weigh the favorable and unfavorable factors presented in the case.

Upon remand, the Director may request any additional evidence considered pertinent to the new determination and any other issue to determine in the first instance if the Applicant merits a favorable exercise of discretion.

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

³ The approval of her application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if she fails to depart.

⁴ 8 USCIS Policy Manual I, retired Adjudicator's Field Manual Chapter 40.6, <https://www.uscis.gov/policymanual>.