U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16007977

Date: SEP. 13, 2022

Appeal of Boston Field Office Decision

Form I212, 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 is inadmissible for having been previously ordered removed.

The Director of the Boston Field Office denied the application, concluding that because the Applicant's adjustment of application had been denied due to a lack of jurisdiction, no purpose would be served in granting her application for permission to reapply for admission.

The matter is now before us on appeal. In her brief, the Applicant asserts that she executed the *in absentia* final removal order issued on [redacted] 1995 when she departed the United States on May 18, 2014 with advance travel authorization while in Temporary Protected Status (TPS) and returned in June 2014, and that as a result USCIS had jurisdiction to adjudicate her application to adjust status.

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 *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking permission to reapply for admission to the United States and has been found inadmissible for having been previously ordered removed.

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any alien, 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 who are 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 foreign national'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. *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 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); *see also Matter of Lee, supra,* at 278 (Finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character, and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience").

II. ANALYSIS

The Applicant entered the United States without inspection or parole on [redacted] 1995 and was apprehended the following day. A Notice to Appear (NTA), charging her with inadmissibility under section 212(A)(6)(a)(i) of the INA, was issued on [redacted] 1995, and on [redacted] 1995 she was ordered removed by an immigration judge *in absentia*. She obtained Temporary Protected Status in 2001, and left the United States pursuant to an I-512L advance parole document on May 18, 2014. She was paroled into the United States on June 1, 2014 and has remained since.

On September 23, 2019 a Form I-130 Petition for Alien Relative filed by the Applicant's daughter on her behalf was approved. However, the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status was denied because, the Director concluded, she remained subject to an unexecuted final order of removal and USCIS therefore lacked jurisdiction to adjudicate her application. Subsequently, her Form I-212 application was denied by the Director because given the denial of her adjustment of status application, it would serve no purpose.

On appeal, the Applicant asserts that the fact that the Director did not reject her application to adjust status, and issued a request for evidence seeking the filing of the instant Form I-212, shows that USCIS retained jurisdiction over her applications. In addition, she references *Matter of Yauri*, 25 I&N Dec. 103 (BIA 2009) for its finding that USCIS has exclusive jurisdiction to adjudicate an arriving alien's application for adjustment of status and retains jurisdiction where an unexecuted final order of removal remains outstanding. However, as stated by the Director, the Applicant is not an arriving alien, so the Applicant has not demonstrated that the holding in *Yauri* applies to her case and gives USCIS exclusive jurisdiction over her adjustment of status application.

In addition, a TPS beneficiary who obtains authorization to travel abroad temporarily, as evidenced by an advance parole document issued under 8 CFR 244.15(a), and who returns to the United States in accordance with such authorization resumes the same immigration status and circumstances they had at the time of departure, and such travel does not result in the execution of any outstanding removal

order. *See 7 USCIS Policy Manual* A.3(D), https://www.uscis.gov/policy-manual (citing section 304(c)(1)(A)(ii) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (**MTINA**), Pub. L. 102-232, 105 Stat. 1733, 1749 (December 12, 1991), as amended). Accordingly, when the Applicant reentered the United States she was returned to the same immigration status she had at the time of departure--that of a TPS recipient who was present in the United States without inspection and admission or parole and who has an outstanding, unexecuted order of removal.

A noncitizen may file a conditional Form I-212 application before departing the United States pursuant to the regulation at 8 C.F.R. § 212.2(j), in anticipation of applying for consular processing of an immigrant visa application abroad, [1] but here, the Applicant does not indicate that she intends to depart the United States.

We note that the Applicant also disputes the denial of her Form I-485 adjustment application, which the Director declined to consider on the merits, 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).

III. CONCLUSION

The Applicant has the burden of proof in seeking permission to reapply for admission. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Because the Form I-212 application is not ripe for review, we will dismiss the appeal.

ORDER: The appeal is dismissed.

[1] 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.