U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22415633

Date: SEPT. 14, 2022

Appeal of Nebraska Service Center Decision

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

The Applicant, who requested an immigrant visa abroad as a beneficiary of an approved Form I-130, Petition for Alien Relative (visa petition) filed by his U.S. citizen father, 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).

Section 212(a)(9)(A)(ii) of the Act provides, in relevant part that a noncitizen who has been ordered removed, or who departed the United States while an order of removal was outstanding, is inadmissible for 10 years after the date of departure or removal. 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 Nebraska Service Center denied the Form I-212, concluding that the Applicant was ineligible for permission to reapply for admission because USCIS revoked approval of his underlying visa petition and he no longer had a basis for immigrating to the United States. In a separate decision, the Director also denied the Applicant's request for a waiver of inadmissibility for fraud or misrepresentation.

On appeal, the Applicant does not contest inadmissibility. He asserts, however, that revocation of his immigrant visa petition was improper and that his elderly U.S. citizen father needs him in the United States.

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.

The record reflects that in [redacted] 2001 an Immigration Judge ordered the Applicant removed from the United States. The Applicant subsequently left the country and applied for an immigrant visa abroad as a beneficiary of an approved visa petition filed by his U.S. citizen father. In 2018 the U.S. Department of State found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act (for fraud or misrepresentation) and section 212(a)(9)(A)(ii) of the Act (for departing the United States

while the removal order was outstanding).[1] The record further shows that in 2021 USCIS revoked the approval of the underlying visa petition, concluding that the Applicant previously entered into a sham marriage for the purpose of evading the immigration laws, and the approval was therefore barred by section 204(c) of the Act,[2] 8 U.S.C. § 1154(c).

The purpose of the visa petition is to establish the basis for seeking an immigrant visa. Here, the approval of the visa petition was revoked, and the record reflects that the Applicant was properly advised in the revocation notice that if he disagreed with the decision he could appeal it by filing Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer. The Applicant does not indicate whether he filed a Form EOIR-29 to appeal the revocation, and he does not submit evidence that the visa petition was otherwise reinstated. As such, he has not established that he has a basis for seeking an immigrant visa abroad at this time. A grant of the Applicant's request for permission to reapply for admission cannot cure the lack of a valid approved visa petition.

Rather, the purpose of a grant of permission to reapply for admission is to remove an inadmissibility bar to an immigrant visa under section 212(a)(9)(A)(ii) of the Act. *See* 8 C.F.R. § 212.2(d). An application for permission to reapply for admission is properly denied, in the exercise of discretion, to an applicant who is mandatorily inadmissible to the United States under another section of the Act, as no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964). Here, the Applicant not only does not have a valid approved visa petition, but he was also found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. Because the Applicant's request for a waiver of this inadmissibility has been denied, he remains inadmissible to the United States under section 212(a)(6)(C)(i) of the Act and ineligible for an immigrant visa regardless of the decision on his request for permission to reapply for admission to the United States.

Consequently, as the Applicant has not established that he is the beneficiary of an approved visa petition and he remains inadmissible to the United States on other grounds, no purpose would be served by granting his request for permission to reapply for admission to the United States at this time. Accordingly, we will dismiss the appeal of the denial of his Form I-212 as a matter of discretion.

ORDER: The appeal is dismissed.

[1] Because the Applicant is residing abroad and seeking an immigrant visa, the U.S. Department of State makes a final determination concerning his eligibility for the visa and any grounds of inadmissibility that may apply.

[2] Section 204(c) of the Act provides that no petition shall be approved if a noncitizen attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.