U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28964471

Date: DEC. 11, 2023

Motion on Administrative Appeals Office Decision

Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal

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), after having been previously ordered deported so he can adjust his status to that of a lawful permanent resident (LPR) in the United States.

The Director of the Baltimore, Maryland Field Office denied the Form I-212 as a matter of discretion, concluding that because the Applicant has not yet departed from the United States and remained in deportation proceedings, U.S. Citizenship and Immigration Services (USCIS) was without jurisdiction to approve or deny his Form I-485, Application to Register Permanent Residence or Adjust Status, and no purpose would be served by granting him permission to reapply for admission. We dismissed the Applicant's appeal on similar grounds, and the matter is now before us on a motion to reconsider.

The Applicant states generally that a grant of permission to reapply for admission to the United States will provide him with a path to seek adjustment of status anew as the beneficiary of an approved immediate relative visa petition. He opines that had the Director previously approved his Form I-212 on a *nunc pro tunc* basis, USCIS would have had a purpose in adjudicating his adjustment of status request. Upon review, we will dismiss the motion to reconsider.

A motion to reconsider must establish that our previous decision was based on an incorrect application of law or USCIS 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 immigration benefit sought.

As an initial matter, our review on motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). We will therefore only consider the Applicant's assertions to the extent that they pertain to our decision dismissing his appeal, which we incorporate herein by reference.

As previously discussed, the Applicant was found ineligible to adjust his status before USCIS on jurisdictional grounds. In dismissing the Applicant's appeal, we explained that no constructive

purpose would be served by considering the merits of his request for permission to reapply for admission, because such permission, even if granted, would not have resulted in his adjustment of status to that of an LPR.[1] We further noted that a determination of the Applicant's eligibility for adjustment of status was beyond the scope of our review on appeal, and that he would need to seek reopening or reconsideration of the adverse decision on his Form I-485 before the Director.

The Applicant does not identify any legal or policy errors in our decision to dismiss his appeal for the above reasons. Nor does he claim that the dismissal was otherwise incorrect based on the evidence in the record at the time. Rather, he states that when he concurrently filed his Form I-212 and I-485 pursuant to the regulation at 8 C.F.R. § 245.1(f) he expected the Director to adjudicate his Form I-212 first, and then consider his eligibility for adjustment of status, and he avers that the Director erred by denying his Form I-485 before he had an opportunity to appeal the denial of his request for permission to reapply. [2]

Again, the issue of the Applicant's eligibility for adjustment of status was not before us on appeal, and we will not address it on motion. Moreover, although the Applicant asserts that the Director should have adjudicated his Form I-212 before denying his Form I-485 pursuant to the regulation at 8 C.F.R. § 245.1(f), the Applicant is not inadmissible under section 212(a)(9)(A) of the Act because he has not departed the United States after being ordered deported, and he does not require permission to reapply for admission under section 212(a)(9)(A)(iii).[3] Further, even if the Applicant were inadmissible under section 212(a)(9)(A) of the Act and an approved Form I-212 were necessary, he does not point to any legal authority or USCIS policy guidance indicating that approval of his concurrently filed Form I-212 might cure his ineligibility to adjust status before USCIS.

Based on the above, we conclude that the Applicant has not demonstrated that we erred as a matter of law or policy in dismissing his appeal, or that our decision was incorrect based on the evidence in the record at the time. Consequently, he has not established a basis for us to reconsider that decision.

ORDER: The motion to reconsider is dismissed.

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[1] We further noted that although individuals who currently reside in the United States may seek conditional approval of a Form I-212 prior to their departure from the United States under the regulation at 8 C.F.R. § 212.2(j). The Applicant is seeking adjustment of status, and the record fails to establish that the Applicant intends to apply for an immigrant visa and is thus seeking conditional permission to reapply for admission prior to departing the United States.

[2] In support, the Applicant references our 2012 non-precedent decision in an unrelated matter The Applicant does not provide a proper citation or a copy of that decision. Moreover, the decision was not published as a precedent and is not binding on USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c).

[3] The Applicant also suggests he may qualify for a *nunc pro tunc* grant of permission to reapply for admission, The Board of Immigration Appeals has held that *nunc pro tunc* permission to reapply for admission is available in limited circumstances where a grant of such relief would effect a complete disposition of the case, such as where the only ground of inadmissibility would thereby be eliminated. *See Matter of Garcia-Linares*, 21 I&N Dec. 254, 256 (BIA 1996); *Matter of Roman*, 19 I&N Dec. 855, 857 (BIA 1988); *Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, as the Applicant is not yet inadmissible under section 212(a)(9)(A) of the Act, he does not require this relief, and it would not cure his ineligibility to adjust status before USCIS or otherwise effect a complete disposition of his case.