U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18311450

Date: DEC. 12, 2023

Appeal of Fort Myers, Florida Field Office Decision

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

The Applicant, who is currently in the United States, 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 removed.

The Director of the Fort Myers, Florida Field Office denied the application as a matter of discretion, concluding that because U.S. Citizenship and Immigration Services (USCIS) did not have jurisdiction over the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), no purpose would be served in granting her permission to reapply for admission.

On appeal, the Applicant asserts that she is eligible to adjust status in the United States or, in the alternative, that a pending Form I-485 is not a prerequisite for jurisdiction over the adjudication of Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212), and the Director's adverse decision was therefore in error.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

Section 212(a)(9)(A)(ii) of the Act provides that a noncitizen 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, is inadmissible. A noncitizen who is inadmissible under section 212(a)(9)(A)(ii) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act if prior to the date of the reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission. Noncitizens inside the United States may apply for retroactive permission to reapply for admission in conjunction with their applications for adjustment of status. 8 C.F.R. §§ 212.2(e), 212.2(i)(2).

The record reflects that the Applicant entered the United States without having been inspected and admitted or paroled. An Immigration Judge ordered the Applicant removed from the United States in [redacted] 2009, and later that year the Board of Immigration Appeals dismissed her appeal of the Immigration Judge's decision. The Applicant remained in the United States and was granted Temporary Protected Status (TPS). In 2019 she obtained a Form I-512L, Authorization for Parole of an Alien Into the United States, pursuant to section 244(f)(3) of the Act, 8 U.S.C. § 1254a(f)(3), as a TPS recipient; she then traveled abroad and returned to the United States with this document. The Applicant subsequently filed the Form I-485 and the instant Form I-212 indicating that she intended to adjust her status in the United States to that of a lawful permanent resident spouse of a U.S. citizen based on an approved Form I-130, Petition for Alien Relative (Form I-130).

As stated, the Director denied the Form I-485, concluding that the Applicant remained in removal proceedings and USCIS did not have jurisdiction to consider her adjustment of status request. Finding the Applicant ineligible to adjust her status before USCIS, the Director also denied her concurrently filed Form I-212.

The Applicant asserts that no regulation, statute, or case law supports a position that only noncitizens who have a pending Form I-485 may seek permission to reapply for admission and that any noncitizen with an outstanding removal order may file a Form I-212 from the United States in advance of a consular interview abroad. She states that the Director therefore erred by denying her Form I-212 without addressing the positive factors in her case, including the fact that she "may have to proceed abroad for an interview for her immigrant visa at the U.S. Consulate in Port au Prince, Haiti" even though in 2020 the U.S. Department of State reaffirmed its travel warning concerning Haiti due to crime, civil unrest, and kidnappings.

We acknowledge the Applicant's statements on appeal, but agree with the Director's discretionary determination that approval of her Form I-212 is not warranted at this time.

While we recognize that neither the Act nor the pertinent regulations at 8 C.F.R. § 212.2 specifically require a noncitizen to have a pending Form I-485 to seek permission to reapply for admission to the United States, the Applicant has filed the instant Form I-212 in conjunction with her Form I-485 indicating that she is requesting such permission to adjust her status to that of a lawful permanent resident in the United States. Furthermore, although the regulation at 8 C.F.R. § 212.2(j) provides for advance permission to reapply for admission, a grant of such permission has no effect until a noncitizen departs from the United States. Here, the Applicant states generally that she may have to travel abroad for a consular interview, but she offers no evidence that she has applied for an immigrant visa with the U.S. Department of State or that she intends to do so. To the contrary, the Form I-130 approval notice in the record indicates that "the beneficiary is in the United States and wishes to apply for adjustment of status to that of a lawful permanent resident."[1]

[1] The approval notice further provides that "if the beneficiary decides to apply for an immigrant visa based on this petition, [they] should file Form I-824, Application for Action on an Approved Application or Petition, to request [USCIS] [to] send the petition to the U.S. Department of State National Visa Center (NVC)." The Applicant does not claim that she followed these instructions to have her approved Form I-130 transferred abroad so she could seek an immigrant visa instead of adjustment of status.

However, the Director determined that the Applicant was ineligible to adjust her status before USCIS because she remains in removal proceedings due to the outstanding removal order that an Immigration Judge issued in 2009. A TPS beneficiary who departs the United States after receiving prior travel authorization pursuant to section 244(f)(3) of the Act and returns with a valid TPS travel document does not execute an outstanding final removal order and therefore remains in removal proceedings upon return. *See Duarte v. Mayorkas*, 27 F.4th 1044, 1053-54 (5th Cir. 2022); *see also* 7 *USCIS Policy Manual* A.3(D) n. 23, https://www.uscis.gov/policy-manual.

In conclusion, the Applicant filed her application for permission to reapply with USCIS in conjunction with her application to adjust status. Because she remains in removal proceedings, USCIS does not have jurisdiction over her adjustment of status request and has denied her underlying Form I-485. We will therefore dismiss the Applicant's appeal of the Form I-212 denial as a matter of discretion. *See Matter of Martinez-Torres*, 10 I&N Dec. 776, 776-77 (Reg'l Comm'r 1964); *see also I.N.S. v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

ORDER: The appeal is dismissed.