U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15449827

Date: DEC. 13, 2023

Appeal of Charlotte Amalie Field Office Decision

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

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 Charlotte Amalie Field Office in St. Thomas, Virgin Islands, denied the instant Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that a grant of permission to reapply for admission was not warranted because the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), had been denied and she did not establish she had another basis to seek admission to the United States as an immigrant or nonimmigrant.

On appeal, the Applicant asserts that a pending Form I-485 is not a requirement to seek permission to reapply for admission, and that the Director erred by failing to consider the merits of her request for such permission.

The Applicant bears the burden of proof to demonstrate eligibility for the benefit sought 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 an Immigration Judge ordered the Applicant removed from the United States in 2005, and the Board of Immigration Appeals dismissed her appeal of the Immigration Judge's decision in 2006. The Applicant remained in the United States and was later granted Temporary Protected Status (TPS). 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. The Applicant traveled abroad and returned to the United States with this travel document in 2017. She 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.

The Director denied the Applicant's Form I-485, concluding that the Applicant remained in removal proceedings and U.S. Citizenship and Immigration Services (USCIS) was without jurisdiction to adjudicate her adjustment of status request. The Director then denied the Applicant's Form I-212, finding that a grant of permission to reapply for admission was not warranted in the exercise of discretion because the Applicant was not eligible to adjust her status, and the record did not show that she had a pending request for an immigrant or nonimmigrant visa to seek admission to the United States on another basis.

The Applicant asserts that the Director's decision was in error because her departure from the United States effectuated the removal order, thus bringing finality to the removal proceedings against her. She states, in the alternative, that a pending Form I-485 is not a requirement for seeking permission to reapply for admission, and generally states that a noncitizen with an outstanding removal order may request such permission before departing from the United States for immigrant visa processing at a U.S. Consulate abroad.[1] We acknowledge the Applicant's statements; however, they are not sufficient to overcome the basis for the denial of her Form I-212.

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. However, 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*.

As stated, 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 2005. 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.

Because the Applicant remains in removal proceedings, USCIS does not have jurisdiction over her adjustment of status request and has denied her underlying Form I-485. As the Applicant has not demonstrated that she currently has an alternative basis for seeking admission to the United States or

[1] The regulation at 8 C.F.R. § 212.2(j) provides for a conditional grant of advance permission to apply for admission, which becomes effective upon a noncitizen's departure from the United States. The Applicant does not claim that she intends to travel abroad and subsequently apply for admission to the United States as an immigrant, or that she has filed an immigrant visa application with the U.S. Department of State.

adjustment of status, we will dismiss her 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.