U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 14276465

Date: DEC. 14, 2023

Appeal of Fort Meyers, Florida Field Office Decision

Form I-212, 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), after having been previously ordered removed.

The record indicates that the Applicant was ordered removed from the United States in 2001. The Applicant was subsequently granted Temporary Protected Status (TPS) and obtained a Form I-512L, *Authorization for Parole of an Alien Into the United States*, pursuant to the TPS provisions in section 244(f)(3) of the Act, 8 U.S.C. § 1254a(f)(3), and corresponding regulations at 8 C.F.R. § 244.15(a). The Applicant then traveled abroad and returned to the United States with that document in 2015. In December 2019 he filed a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), seeking adjustment of status to that of a lawful permanent resident.

The Director of the Fort Meyers, Florida Field Office denied the Applicant's Form I-212, Application for Permission to Reapply for Admission (Form I-212), as a matter of discretion. The Director noted that the Applicant's Form I-485 had been denied because he remained in removal proceedings and U.S. Citizenship and Immigration Services (USCIS) was without jurisdiction to adjudicate his adjustment of status request.[1] On appeal, the Applicant submits a brief and asserts eligibility for the benefit sought.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *See 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

[1] USCIS does not have jurisdiction to grant or deny a request for adjustment of status under section 245 of the Act in any case in which the noncitizen is a respondent in removal or deportation proceedings before EOIR unless the noncitizen has been placed in proceedings as an "arriving alien." 8 C.F.R. §§ 245.2(a)(1), 1245.2(a)(1).

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.

On appeal, the Applicant asserts that the Director's decision finding that USCIS was without jurisdiction to adjudicate his application for adjustment of status was in error because his departure from the United States effectuated the removal order, thus bringing finality to the removal proceedings against him. He states, in the alternative, that a pending Form I-485 is not a requirement for seeking permission to reapply for admission, and 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.[2]

The Applicant filed his application for permission to reapply with the Director concurrently with his Form I-485, and he indicated on the Form I-212 that he intends to adjust status in the United States. However, the Applicant has not demonstrated that he is eligible to adjust his status before USCIS. As the Director previously determined when denying the Applicant's Form I-485, the Applicant remains in removal proceedings on account of the removal order that an Immigration Judge issued in 2001. 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 travel document does not execute an outstanding final removal order and therefore remains in removal proceedings upon their 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 his adjustment of status request and has denied his underlying Form I-485, and 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.

[2] 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 record does not indicate that the Applicant intends to travel abroad and subsequently apply for admission to the United States as an immigrant, or that he has filed an immigrant visa application with the U.S. Department of State.