U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29504799

Date: DEC. 22, 2023

Appeal of Hartford, Connecticut Field Office Decision

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

The Applicant, who intends to request an immigrant visa abroad, seeks advance 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), because she will become inadmissible upon departing from the United States for having been previously ordered removed. Permission to reapply for admission is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services may grant in the exercise of discretion.

The Director of the Hartford, Connecticut Field Office denied the application, concluding that no purpose would be served in granting conditional approval for permission to reapply for admission as the Applicant, upon her departure, would also become inadmissible under section 212(a)(6)(B) of the Act for failure to appear at her removal proceedings. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, other than an "arriving alien," who has been ordered removed under section 240 of the Act, 8 U.S.C. § 1229a, or any other provision of law, or who 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. Noncitizens found inadmissible under section 212(a)(9)(A) 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.

Section 212(a)(6)(B) of the Act provides that any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the noncitizen's inadmissibility or deportability, and who seeks admission to the United States within five years of the noncitizen's subsequent departure or removal, is inadmissible. There is no waiver for this inadmissibility.

Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *Matter of Tin*, 14 I&N Dec. 371, 373-74 (Reg'l Comm'r 1973).

II. ANALYSIS

The Applicant is currently in the United States and seeks permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before departing the United States.[1] Because she has an outstanding order of removal, she will be inadmissible under section 212(a)(9)(A)(ii) of the Act once she departs.

The record indicates that the Applicant entered the United States without admission in September 2000. She was served with a Notice to Appear and released from immigration custody in Texas, at which time she provided an address in Connecticut. In June 2001, her former counsel submitted a Motion for Change of Venue to [redacted], Maryland, and provided a new address for the Applicant in Maryland. On the same day, her counsel submitted a Motion to Withdraw as Attorney of Record. In July 2001, the Motions were granted and the hearing date was scheduled for [redacted], 2001, in [redacted], Maryland. The Applicant was ordered removed *in absentia* by an Immigration Judge on [redacted], 2001.

In this case, the Applicant does not contest that she will be inadmissible under section 212(a)(9)(A)(ii) of the Act upon her departure from the United States. The Director determined that upon departure, the Applicant will also become inadmissible for five years under section 212(a)(6)(B) of the Act due to her failure to appear at her removal hearing, an inadmissibility for which no waiver is available, and she did not establish a reasonable cause for failing to attend the hearing. Therefore, the Director denied the Form I-212, concluding that no purpose would be served in approving the application as the Applicant would remain inadmissible. We note that the record reflects the Applicant's mother filed a Form I-130, Petition for Alien Relative, on her behalf which was approved in 2020, and she is currently seeking an immigrant visa abroad. Accordingly, the U.S. Department of State will make the final determination concerning the Applicant's eligibility for a visa, including whether she is inadmissible under section 212(a)(6)(B) of the Act or under any other ground.

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[1] The approval of the Form I-212 under those circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if she does not depart.

On appeal, the Applicant asserts that she has demonstrated a reasonable cause for her failure to attend her removal hearing. She provides an updated affidavit and explains, in part, that her former counsel provided the court with an incorrect address in Maryland without notifying her. The Applicant also refers to her counsel's Motions to the Immigration Court, which she submits on appeal, and states that they do not certify the Applicant was provided with copies of the Motions that erroneously reflect an address for her in Maryland.

Considering the new evidence submitted on appeal, we find it appropriate to remand the matter to the Director to evaluate the record as a whole and determine whether the Applicant warrants a favorable exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.