U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23607616

Date: FEB. 16, 2023

Motion on Administrative Appeals Office Decision

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

The Applicant, a native and citizen of Trinidad and Tobago, 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).

The Director of the Philadelphia, Pennsylvania Field Office denied the Form I-212, Application for Permission to Reapply for Admission to the United States After Deportation or Removal, concluding that the Applicant did not establish a favorable exercise of discretion was warranted. The Applicant appealed the Director's decision to us, asserting the Director gave undue negative weight to unfavorable factors and failed to give sufficient weight to favorable equities. We dismissed the Applicant's appeal, reaching the same conclusion as the Director, that the Applicant had not established he merited a favorable exercise of discretion. The matter is now before us on a combined motion to reopen and reconsider. On motion, the Applicant has submitted additional evidence in support of his application and asserts that he has established he merits a favorable exercise of discretion. Upon review, we will dismiss both motions.

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigrations Services (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 requested immigration benefit. Additionally, a review of any motion is limited to the bases supporting the prior adverse decision. 8 C.F.R. § 103.5(a)(1)(i). Thus, we examine any new facts and arguments to the extent that they pertain to our dismissal of the Applicant's prior appeal.

Section 212(a)(9)(A)(ii) of the Act provides in relevant part that any 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. 8 U.S.C. § 1182(a)(9)(A)(ii). Noncitizens who are inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) if prior to the date of 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. 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).

The Applicant is currently in the United States and seeks permission to reapply for admission. The Applicant, a native and citizen of Trinidad and Tobago, entered the United States with a B-1/B-2 nonimmigrant visa in 1986 under a different name. He was later placed in deportation proceedings, which culminated in a grant of voluntary departure in 1995. The Applicant did not depart the United States during the allotted period, and that order converted to an order of deportation. He was removed from the United States on [redacted] 1996, and re-entered in August 1997 with a B-1/B-2 nonimmigrant visa under his current and legal name and has not departed the United States since that entry.

The Applicant married his current U.S. citizen spouse in 2012. His spouse filed a Form I-130, Petition for Alien Relative, on his behalf but withdrew that petition in November 2018. Subsequent to our last decision in the Applicant's case, his spouse filed a new Form I-130 on behalf of the Applicant, which remains pending.

We dismissed the Applicant's appeal, finding that due to the lack of any approved or pending immigrant petition filed on the Applicant's behalf, no purpose would be served in adjudicating the application for permission to reapply for admission. We found that in the absence of an approved immigrant visa petition, the record did not establish that the Applicant intended to depart the United States and apply for an immigrant visa.[1]

Now on motion, the Applicant contends we should reopen and reconsider our prior decision and submits a copy of a completed Form I-130 filed by his spouse in July 2022. As to the Form I-130, there is no evidence in the record to indicate it has been approved. Without an approved Form I-130, the Applicant lacks a basis for adjusting his status to that of a lawful permanent resident, or for being admitted into the country pursuant to an immigrant visa. *See* section 245(a) of the Act, 8 U.S.C. § 1255(a); *see also* 8 C.F.R. §§ 212.2(b)-(j). Accordingly, no purpose would be served in granting the Form I-212. *See Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964) (an application for permission to reapply for admission is properly denied, in the exercise of discretion, where no purpose would be served in granting the application.)

Further, although individuals who currently reside in the United States may seek conditional approval of a Form I-212 prior to their departure to apply for an immigrant visa, it remains unclear if the Applicant intends to depart the United States and pursue an immigrant visa abroad. In his brief on appeal, the Applicant contends he "intends to seek an immigrant visa" if his Form I-212 is approved; however, the Form I-130 filed on the Applicant's behalf indicates he intends to apply for adjustment of status in [redacted] Virginia.[2] Thus, the record fails to establish that the Applicant intends to apply

[1] We further noted in our prior decision that upon departure from the United States and application for an immigrant visa, the U.S. Department of State consular officer may determine the Applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act. If so, the Applicant additionally would need to pursue a waiver of inadmissibility by filing a Form I-601, Application for Waiver of Grounds of Inadmissibility.

[2] Noncitizens physically present in the United States who are inadmissible under section 212(a)(9)(A) of the Act and applying for adjustment of status with USCIS may seek retroactive permission to reapply for admission pursuant to 8 CFR

for an immigrant visa and is currently seeking conditional permission to reapply for admission prior to departing the United States. The new evidence provided with the Applicant's motion to reopen does not overcome the basis for our prior dismissal, and as no purpose would be served in granting permission to reapply for admission at this time, his application remains denied.

On motion, the Applicant further argues we should reconsider our prior decision based on the existence of his completed Form I-130. However, he does not identify or argue any incorrect application of law or USCIS policy or that our prior decision was incorrect based on the record of evidence at the time we rendered the prior decision. Therefore, the Applicant has not satisfied the requirements of a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3). We must dismiss his motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

212.2(e). However, they must file the application either *concurrently with their application for adjustment of status* (Form I-485), or at any time afterward, at the USCIS office with jurisdiction over the adjustment of status application. *See Instructions for Application for Permission to Re-apply for Admission Into the United States After Deportation or Removal – Where to File*, https://www.uscis.gov/sites/default/files/document/forms/i-212instr.pdf.