U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24826653

Date: FEB. 23, 2023

Appeal of Nebraska Service Center 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, 8 U.S.C. § 1182(a)(9)(A)(iii). The Director of the Nebraska Service Center denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the Applicant had not established that he was an applicant for an immigrant visa, an applicant for adjustment of status, or an applicant seeking conditional approval of a Form I-212 prior to his departure from the United States under the regulation at 8 C.F.R. § 212.2(j).

On appeal, the Applicant asserts that he has an approved immigrant visa petition and intends to apply "for adjustment of status under 245(a) with a parole entry with a fraud waiver under INA §212(i) to waive his attempted entry using a fraudulent document for which he was removed on May 24, 1999."

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews 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)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), provides that any "arriving alien . . . who has been ordered removed under section 235(b)(1) [of the Act, 8 U.S.C. § 1225(b)(1),] or at the end of proceedings under section 240 [of the Act, 8 U.S.C. § 1229a,] initiated upon the arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible."

Noncitizens physically present in the United States who are inadmissible under section 212(a)(9)(A) of the Act and are applying for adjustment of status (Form I-485, Application to Register Permanent Residence or Adjust Status) with USCIS may seek retroactive permission to reapply for admission pursuant to 8 CFR 212.2(e). However, they must file the Form I-212 either *concurrently with their application for adjustment of status*, 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.

As correctly noted by the Director, the record does not establish that the Applicant filed the Form I-212 concurrently with a Form I-485, or at any time afterward, at the USCIS office with jurisdiction over the adjustment of status application. Thus, no purpose would be served in adjudicating his application for permission to reapply for admission. The appeal of the denial of the Form I-212 will therefore be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.