U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25725684

Date: JUN. 2, 2023

Appeal of Baltimore, Maryland Field Office Decision

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

The Applicant, a native and citizen of El Salvador, seeks conditional approval of her application for 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); 8 C.F.R. § 212.2(j).

The Director of the Baltimore, Maryland Field Office denied the Form I-212, Application for Permission to Reapply for Admission (application for permission to reapply) as a matter of discretion, concluding that upon departure from the United States the Applicant would become inadmissible for five years due to failing to attend her removal proceeding, for which there is no waiver, and therefore no purpose would be served in granting her application for permission to reapply. 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 dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a foreign national who has been ordered removed under section 240 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. Foreign nationals 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) if prior to the date of the reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Secretary of Homeland Security has consented to the foreign national's reapplying for admission.

8 C.F.R. § 212.2(j) states that a foreign national whose departure will execute an order of deportation shall receive a conditional approval depending upon his or her satisfactory departure. However, the grant of permission to reapply does not waive inadmissibility under section 212(a)(9)(A) of the Act

resulting from exclusion, deportation, or removal proceedings which are instituted subsequent to the date permission to reapply is granted.

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. *See Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). However, when an applicant will remain mandatorily inadmissible or excludable from the United States, no purpose would be served in granting the application for permission to reapply. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964); *Matter of J-F-D-*, 10 I&N Dec. 694 (Reg'l Comm'r 1963).

Section 212(a)(6)(B) of the Act provides that any foreign national who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the foreign national's inadmissibility or deportability, and who seeks admission to the United States within five years of the foreign national's subsequent departure or removal, is inadmissible. Although there is no statutory definition of the term "reasonable cause" as it is used in section 212(a)(6)(B) of the Act, guidance from United States Citizenship and Immigration Services (USCIS) provides that it "is something that is not within the reasonable control of the [applicant]."[1]

II. ANALYSIS

The issue on appeal is whether the Applicant should be granted conditional approval of her application for permission to reapply in the exercise of discretion. The record reflects that the Applicant entered the United States without inspection on April 27, 2005, and she is the subject of an unexecuted *in absentia* removal order dated [redacted] 2005. The Applicant does not contest she will become inadmissible under section 212(a)(9)(A)(ii) of the Act, upon departure from the United States, for having been previously ordered removed.

The Director determined that the Applicant's departure from the United States would subject her to inadmissibility under section 212(a)(6)(B) of the Act for five years due to failing to attend her removal proceeding, she did not establish reasonable cause for failing to attend her removal proceeding, and there is no waiver for inadmissibility under section 212(a)(6)(B) of the Act. The Director found that no purpose would be served in adjudicating her application for permission to reapply as she would be subject to a ground of inadmissibility upon departure from the United States for which there is no waiver available. Therefore, the Director denied the application for permission to reapply as a matter of discretion.

On appeal, the Applicant asserts that she had reasonable cause for missing her hearing. Specifically, she indicates she was the victim of domestic abuse by her ex-spouse, she was raped during her journey to the United States, she entered without inspection to escape her ex-spouse, and as a result she developed post-traumatic stress disorder (PTSD). The Applicant contends that due her PTSD, she was unable to comprehend the instructions on the Form I-862, Notice to Appear (NTA), for her removal proceeding

[1] Memorandum from Lori Scialabba, Associate Director for Refugee, Asylum & International Operations Directorate, et al., USCIS, HQ 70/21.1 AD07-18, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators. Revisions to the Adjudicator's Field Manual (AFM) to Include a New Chapter 40.6* (AFM Update AD07-18)(Mar. 3, 2009).

and the consequences of not attending. Additionally, she mentions she was terrified to attend the removal proceeding out of fear of being removed to El Salvador. The Applicant submits an analysis of her case from a Catholic Charities intern which details numerous traumatic experiences in her life. While we are sympathetic to the difficult situation the Applicant was experiencing when she arrived in the United States as well as her psychological condition, the record lacks evidence to support a conclusion that the Applicant's failure to attend her removal proceeding on the appointed date and time was due to factors not within her reasonable control. The record reflects that the Applicant was personally served with an NTA on April 27, 2005, and she was provided with oral notice in Spanish of the time and place of her hearing and the consequences of failing to appear under section 240(b)(7) of the Act. The NTA also provides "[i]f you fail to attend the hearing at the time and place designated on this notice . . . a removal order may be made by the immigration judge in your absence." The record contains the Immigration Judge's *in absentia* removal order, dated [redacted] 2005, showing that the Applicant did not appear for her removal proceeding.

Accordingly, upon departure from the United States the Applicant will be subject to inadmissibility under section 212(a)(6)(B) of the Act for five years, and there is no waiver available for this ground of inadmissibility. Because the Applicant will become inadmissible to the United States under section 212(a)(6)(B) of the Act upon departure from the United States, we will dismiss the instant appeal of the denial of her application for permission to reapply as a matter of discretion as its approval would serve no purpose. *Matter of Martinez-Torres*, *supra*; *Matter of J-F-D*, *supra*.[2]

ORDER: The appeal is dismissed.

[2] Therefore, we will not address the Applicant's claim that she merits a favorable exercise of discretion due to her favorable factors outweighing her unfavorable factors.