U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27886167

Date: June 26, 2023

Appeal of Oakland Park, Florida 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 Haiti, 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). Permission to reapply for admission to the United States is an exception to inadmissibility due to being ordered removed from the United States, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion.

The Director of the Oakland Park, Florida Field Office Decision denied the application as a matter of discretion, concluding the Applicant would remain inadmissible for fraud or misrepresentation even if the permission to reapply for admission application were granted.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012). Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). This office 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, as explained below, we will remand the matter to the Director for the entry of a new decision.

Section 212(a)(9)(A)(ii) of the Act provides that any noncitizen, other than an "arriving alien" described in section 212(a)(9)(A)(i), 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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of a noncitizen convicted of an aggravated felony) 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) 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 noncitizen's reapplying for admission.

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).

The Applicant was ordered removed from the United States on [redacted] 1995, though she is present in the U.S. under Temporary Protected Status. The Applicant does not contest that she is inadmissible under section 212(a)(9)(A)(ii) of the Act for having been ordered removed. The Applicant was also found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, her Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), was denied, and she filed an appeal of that denial. In a separate decision, we indicated that the Applicant had established extreme hardship to a qualifying relative, her U.S. citizen spouse, as required to demonstrate eligibility for the discretionary waiver of that inadmissibility under section 212(i) of the Act. Therefore, we withdrew the Director's conclusion to the contrary and returned the matter for the Director to determine whether the Applicant's Form I-601 waiver request warranted a favorable exercise of discretion.

Considering the Applicant's favorable discretionary factors and the issuance of our Form I-601 remand, we find it appropriate to remand the matter for the Director to determine in the first instance if the Applicant merits 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.