



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 26160743

Date: MAY 24, 2023

Appeal of Nebraska Service Center Decision

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

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 (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), for having been ordered removed. *See* section 212(a)(9)(A)(ii) of the Act.

The Director of the Nebraska Service Center denied the application as a matter of discretion, concluding that the Applicant would remain inadmissible under sections 212(a)(2)(A) of the Act, for a crime involving moral turpitude, and 212(a)(9)(B)(i) of the Act, for unlawful presence, even if the application for permission to reapply for admission were granted. On appeal, the Applicant asserts that he is eligible for the benefit sought.

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, 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 in 2003, and departed the United States in 2014. The Applicant does not contest that he is inadmissible under section 212(a)(9)(A)(ii) of the Act for having been ordered removed. The Applicant was also found inadmissible under sections 212(a)(2)(A) of the Act, for committing a crime involving moral turpitude, and 212(a)(9)(B)(i) of the Act, for unlawful presence. The Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied. On appeal, we determined that extreme hardship to a qualifying relative has been established and thus, we found it appropriate to remand the record for the Director to determine in the first instance whether the Applicant merited a favorable exercise of discretion under the heightened standard of "exceptional and extremely unusual hardship."

Considering the issuance of our Form I-601 remand based on our determination that extreme hardship to a qualifying relative has been established, we find it appropriate to remand the matter for the Director to determine if the Applicant merits a favorable exercise of discretion at this time.

ORDER: The decision of the Director is withdrawn.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