U.S. Citizenship and Immigration Services

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

In Re: 27187007

Date: JAN. 2, 2024

Appeal of Atlanta, Georgia Field Office Decision

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

The Applicant, who is currently in the United States, seeks permission to reapply for admission under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), after having been previously ordered removed.

The Director of the Atlanta, Georgia Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), as a matter of discretion, concluding that a grant of such permission was not warranted because the Applicant remained in removal proceedings and U.S. Citizenship and Immigration Services (USCIS) had administratively closed her Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), for lack of jurisdiction.

On appeal, the Applicant submits additional evidence and reasserts eligibility.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 212(a)(9)(A)(ii) of the Act provides that a 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. A noncitizen who is inadmissible under section 212(a)(9)(A)(ii) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act if prior to the date of the 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. Noncitizens inside the United States may seek retroactive permission to reapply for admission in conjunction with their applications for adjustment of status. 8 C.F.R. §§ 212.2(e), 212.2(i)(2).

Approval of an application for permission to reapply is discretionary, and any unfavorable factors must be weighed against the favorable factors to determine if approval is warranted as a matter of

discretion. *Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973).

The record reflects that the Applicant initially entered the United States in 1993 without having been inspected and admitted or paroled. In 1999 an Immigration Judge granted the Applicant permission to voluntarily depart from the United States by April 5, 2000, with an alternate order of removal to El Salvador if she failed to depart by that date. The Applicant did not comply with the voluntary departure order; she remained in the United States and was later granted Temporary Protected Status (TPS). In 2018 she obtained a Form I-512L, Authorization for Parole of an Alien Into the United States, pursuant to section 244(f)(3) of the Act, 8 U.S.C. § 1254a(f)(3), as a TPS recipient. The Applicant traveled abroad and returned to the United States with this travel document in 2018. She subsequently filed the Form I-485 and the instant Form I-212 indicating that she intended to adjust her status in the United States to that of a lawful permanent resident.

As stated, the Director administratively closed the Applicant's Form I-485, concluding that she remained in removal proceedings and USCIS was without jurisdiction to adjudicate her adjustment of status request.[1] The Director then denied the Applicant's Form I-212, finding that a grant of permission to reapply for admission was not warranted in the exercise of discretion because the Applicant was not eligible to adjust her status before USCIS, and she presented no evidence that she could seek admission to the United States on another basis.

The Applicant now submits evidence that an Immigration Judge in Atlanta, Georgia subsequently granted her motion to reopen, dismissed the underlying removal proceedings without prejudice, and vacated the removal order based on a joint request from the Applicant and the Department of Homeland Security.[2] Consequently, as it appears that the Applicant is no longer in removal proceedings, we will return the matter to the Director to reevaluate her eligibility for permission to reapply for admission and to enter a new decision.

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

[1] A TPS beneficiary who departs the United States after receiving prior travel authorization pursuant to section 244(f)(3) of the Act and returns with a valid TPS travel document does not execute an outstanding final removal order and therefore remains in removal proceedings upon return. *See Duarte v. Mayorkas*, 27 F.4th 1044, 1053-54; *see also* 7 *USCIS Policy Manual* A.3(D) n. 23, https://www.uscis.gov/policy-manual.

[2] She also submits additional evidence of favorable discretionary factors in her case, including family ties, payment of taxes and adverse conditions in El Salvador.