U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29670059

Date: JANUARY 5, 2024

Appeal of Long Island, New York Field Office Decision

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

The Applicant will be inadmissible upon her departure from the United States for having been previously ordered removed and 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). The Director of the Long Island, New York Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), as a matter of discretion, concluding that no purpose would be served in granting the application because the Applicant was also inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. 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, remand the matter to the Director for further proceedings.

In this case, the Applicant does not contest that she will be inadmissible under section 212(a)(9)(A)(ii) of the Act upon her departure from the United States. On appeal, citing Mamouzian v. Ashcroft, 390 F.3d 1129 (9th Cir. 2004), she asserts that she is not inadmissible under section 212(a)(6)(C)(i) of the Act because her misrepresentations were made in connection with her flight from her country due to persecution, and that false statements made to U.S. government officials in order to gain entry into the United States cannot be held against asylum applicants. We need not determine at this time whether the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act as the Applicant is seeking conditional approval of her application under the regulation at 8 C.F.R. § 212.2(j)[1] before departing from the United States to seek an immigrant visa at a U.S. consulate abroad, as she will be inadmissible upon her departure under section 212(a)(9)(A)(ii) of the Act. Accordingly, the U.S. Department of State will make the final determination concerning the Applicant's eligibility for a visa, including whether she is inadmissible under section 212(a)(6)(C)(i) of the Act or under any other ground.

[1] The regulation at 8 C.F.R. § 212.2(j) provides that a noncitizen whose departure will execute an order of removal may, prior to leaving the United States, seek conditional approval of an application for permission to reapply for admission.

Here, the Director denied the Form I-212 based on the Applicant's potential inadmissibility and did not review and weigh all favorable and negative factors with consideration to all evidence presented. In light of the foregoing, we will remand the matter to the Director to reevaluate the submitted evidence, including that submitted on appeal, and determine whether the Applicant warrants 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.