U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24609215

Date: APR. 17, 2023

Appeal of Queens, New York Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Columbia currently residing in the United States, concurrently filed Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application) and Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible and seeks a waiver of inadmissibility.[1]

The Director of the Queens, New York Field Office administratively closed the waiver application determining the Department of Justice's Executive Office for Immigration Review (EOIR) was the proper forum to adjudicate it because an Immigration Judge has jurisdiction over the Applicant's adjustment of status application. 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.

The regulation at 8 C.F.R. § 245.2(a)(1) provides that U.S. Citizenship and Immigration Services (USCIS) has jurisdiction to adjudicate an application for adjustment of status unless an Immigration Judge has jurisdiction to adjudicate under 8 C.F.R. § 1245.2(a)(1). In addition, 8 C.F.R. § 1245.2(a)(1)(i) provides that other than arriving aliens, an Immigration Judge has exclusive jurisdiction over an application for adjustment of status, when an applicant is in removal proceedings.

[1] The Applicant also filed a Form I-212, Application for Permission to Reapply for Admission (Form I-212), which the Director denied as a matter of law and as a matter of discretion. The Director identified the Applicant as inadmissible under the following grounds: sections 212(a)(9)(A)(ii) (having been ordered removed as a deportable noncitizen), 212(a)(9)(C)(i)(II) (entering the United States without being admitted or paroled after having been excluded, deported, or removed); 212(a)(6)(B) (failing to attend removal proceedings); 212(a)(6)(C)(i) (procuring an immigration benefit through willful fraud or misrepresentation), 212(a)(2)(A) (having been convicted of crimes involving moral turpitude), 212(a)(2)(B) (having multiple criminal convictions), 212(a)(2)(C)(i) (trafficking controlled substances) of the Act. The Applicant appealed the Form I-212 denial. We dismissed the appeal concluding no purpose would be served in adjudicating the form. We explained that there was no pending adjustment application because the Director administratively closed it and adjudication of the Form I-212, even if approved, would not cure all of the inadmissibilities raised by the Director.

The term "arriving alien" refers to an applicant for admission coming or attempting to come into the United States at a port of entry, a noncitizen seeking transit through the United States at a port-of-entry, or a noncitizen interdicted in international or United States waters and brought into the United States by any means. 8 C.F.R. § 1.2.

The Director administratively closed the Applicant's adjustment application, citing the above regulatory guidance, and explained that the Applicant was ordered removed in [redacted] 1997[2] under section 212(a)(6)(A)(i) of the Act as an alien present in the United States without admission or parole. The [redacted] 1997 removal order was reinstated by the EOIR in [redacted] 2012 and removal proceedings have not been terminated. The Director determined that the Applicant was not an "arriving alien" and his adjustment application was under the jurisdiction of an Immigration Judge. Our records do not indicate that the Applicant moved to reopen or to reconsider the decision on the adjustment application before the Director.[3] Similarly, in the decision administratively closing the waiver application, the Director explained that the Applicant was not an arriving alien and was a respondent in removal proceedings so the EOIR had jurisdiction of the adjustment application and was the proper forum to adjudicate the waiver application.

On appeal, the Applicant asserts that he is not under the jurisdiction of the EOIR because he was granted deferred action after his [redacted] 1997 removal order was reinstated and he was never physically removed. In addition, he claims that the EOIR does not have jurisdiction as he executed his removal orders by remaining outside the United States from 1997 to 2012 and was allowed to depart and reenter the United States in 2015, pursuant to a grant of humanitarian parole. The Applicant does not explain how this immigration history removes him from the jurisdiction of the EOIR and he does not cite to legal precedent in support of his assertion. The Applicant is not an arriving alien and has not established that removal proceedings have been terminated. Because USCIS does not have jurisdiction over the Applicant's adjustment of status and waiver applications, we will not disturb the Director's decision administratively closing the Applicant's waiver application.

ORDER: The appeal is dismissed.

[2] Records evidence that the Applicant was also ordered removed in absentia in [redacted] 1997 under a different alias.
[3] We do not have jurisdiction to review the Director's decision on the adjustment application under section 245 of the Act. We will address the Applicant's arguments regarding jurisdiction as it relates to the instant waiver application.