U.S. Citizenship and Immigration Services

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

In Re: 29221133

Date: DEC. 12, 2023

Appeal of New York, New York 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 Indonesia, seeks conditional approval of his application for 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); 8 C.F.R. § 212.2(j).

The Director of the New York, New York Field Office initially denied the Form I-212, Application for Permission to Reapply for Admission (application for permission to reapply) in November 2019, concluding that the Applicant did not meet the requirements for this benefit as he was not inadmissible under section 212(a)(9)(A) or section 212(a)(9)(C) of the Act. The Applicant filed an appeal, and we remanded the matter to the Director in October 2020. We determined that the Applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act due to his removal order pursuant to section 252(b) of the Act, he must obtain permission to reapply for readmission before he leaves the United States, and the Director should determine whether he merits a favorable exercise of discretion. The Director again denied the application for permission to reapply in May 2023, concluding that the Applicant was ordered removed *in absentia* and is inadmissible under section 212(a)(6)(B) of the Act. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

## I. LAW

Section 212(a)(6)(B) of the Act provides that any foreign national who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the foreign national's inadmissibility or deportability, and who seeks admission to the United States within five years of the foreign national's subsequent departure or removal, is inadmissible. Although there is no statutory definition of the term "reasonable cause" as it is used in section 212(a)(6)(B) of the Act, guidance from United States

Citizenship and Immigration Services (USCIS) provides that it "is something that is not within the reasonable control of the alien."[1]

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a foreign national who has been ordered removed under section 240 or any other provision of law, or who 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. Foreign nationals 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 foreign national's reapplying for admission.

8 C.F.R. § 212.2(j) states that a foreign national whose departure will execute an order of deportation shall receive a conditional approval depending upon their satisfactory departure. However, the grant of permission to reapply does not waive inadmissibility under section 212(a)(9)(A) of the Act resulting from exclusion, deportation, or removal proceedings which are instituted subsequent to the date permission to reapply is granted.

Section 252(b) of the Act provides, in pertinent part, any immigration officer may, in their discretion, if they determine that a foreign national is not a bona fide crewman, or does not intend to depart on the vessel or aircraft which brought them, revoke the conditional permit to land which was granted such crewman under the provisions of subsection (a)(1), take such crewman into custody, and require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain them on board such vessel or aircraft, if practicable, and such crewman shall be removed from the United States . . . Nothing in this section shall be construed to require the procedure prescribed in section 1229a of this title to cases falling within the provisions of this subsection.

## II. ANALYSIS

The record reflects that the Applicant arrived in the United States on a cruise ship with a C1/D crewmember visa on November 17, 2007, and he deserted the cruise ship the next day. On [redacted], 2007, his D-1 conditional landing permit was revoked, and his detention and removal were ordered pursuant to section 252(b) of the Act. The record includes Form I-99, Notice of Revocation and Penalty, dated [redacted], 2007. The Applicant has not departed the United States, and he will therefore become inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure from the United States due to his removal order. The Applicant does not contest this finding on appeal.

The Director found that the Applicant was ordered removed *in absentia* and he is inadmissible under section 212(a)(6)(B) of the Act. Based on those findings, the Director denied the application for permission to reapply.[2] On appeal, the Applicant asserts that the Director misconstrued the facts and misapplied the law. We will now the address the record. First, we note that a foreign national does

[1] *Adjudicator's Field Manual* 40.6.2(b)(3)(i), https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-17138/0-0-0-17444.html#0-0-0-1779.

[2] We note that no purpose would be served in approving an application for permission to reapply for an Applicant who would become statutorily inadmissible to the United States under section 212(a)(6)(B) of the Act upon departure or removal from the United States.

not become inadmissible under section 212(a)(6)(B) of the Act until their departure or removal from the United States. Second, the record does not establish that the Applicant would become inadmissible under section 212(a)(6)(B) of the Act upon departure or removal from the United States. In order to be inadmissible under section 212(a)(6)(B) of the Act, a foreign national must have been in removal proceedings under section 240 of the Act. 8 *USCIS Policy Manual* I, retired *Adjudicator's Field Manual* Chapter 40.6.2(b), https://www.uscis.gov/policymanual. In this case, the Applicant was ordered removed pursuant to section 252(b) of the Act, a summary removal procedure without a hearing. *See Matter of Di Santillo*, 18 I&N Dec. 407 (BIA 1983) (providing a foreign national who is removed pursuant to the summary procedures contained in section 252(b) of the Act is not relieved of the requirements of obtaining consent to reapply for admission). Furthermore, section 252(b) of the Act specifies that "the procedure prescribed in [8 U.S.C.] section 1229a," which refers to removal proceedings under section 240 of the Act, is not required. As the Applicant was not placed in removal proceedings under section 240 of the Act, he would not become statutorily inadmissible under section 212(a)(6)(B) of the Act upon departure or removal from the United States. Therefore, we find it appropriate to remand the matter to the Director to determine in the first instance whether he merits a favorable exercise of discretion.

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