



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

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

In Re: 28694383

Date: NOV. 8, 2023

Appeal of Newark, New Jersey Field Office Decision

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

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 previously ordered removed.

The Director of the Newark, New Jersey Field Office denied the application as a matter of discretion, concluding that the unfavorable factors outweighed the favorable factors. 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 record establishes that the Applicant was ordered removed *in absentia* in [ ] 2005. The Applicant subsequently filed a motion to reopen removal proceedings with the Immigration Court and in August 2018, the Immigration Judge granted the Applicant's motion to reopen the *in absentia* removal order. If a motion to reopen is granted, the original removal order is vacated. *Nken v. Holder*, 556 U.S. 418, 429 n.1 (2009); *see also* 8 C.F.R. § 1003.23(b)(4)(ii). The Immigration Judge subsequently denied the Applicant's application for cancellation of removal and he was ordered removed from the United States in [ ] 2020. The Applicant filed an appeal with the Board of Immigration Appeals, which remains pending as of the date of this decision. The Applicant does not require permission to reapply for admission at this time. Therefore, we will dismiss the appeal as further pursuit of the matter at hand is moot.

**ORDER:** The appeal is dismissed.