U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12756887

Date: NOV. 30, 2023

Appeal of Lawrence, Massachusetts 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), after having been previously ordered removed.

The Director of the Lawrence, Massachusetts Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), as a matter of discretion, concluding that the positive equities were insufficient to overcome the negative impact of the Applicant's previous immigration violations. On appeal, the Applicant submits additional evidence and asserts that the Director erred by not giving sufficient weight to the positive factors in her case, including her longtime residence and family ties in the United States.

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). *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

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 apply for 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).

II. ANALYSIS

The record indicates that the Applicant entered the United States in 1994 or 1995 without inspection, admission, or parole and applied for asylum. She did not attend her asylum interview and was placed in removal proceedings in [redacted] 1997. Because the Applicant did not appear for a scheduled removal hearing, in [redacted] 1997 an Immigration Judge ordered her removed from the United States in absentia. The Applicant was subsequently granted Temporary Protected Status (TPS) and obtained a Form I-512L, *Authorization for Parole of an Alien Into the United States*, pursuant to the TPS provisions in section 244(f)(3) of the Act, 8 U.S.C. § 1254a(f)(3), and corresponding regulations at 8 C.F.R. § 244.15(a). The Applicant then traveled abroad and returned to the United States with that document in January 2018. In March 2018 she filed a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), seeking adjustment of status to that of a lawful permanent resident.

In November 2018, the Director issued a request for evidence (RFE), advising the Applicant that she appeared inadmissible under section 212(a)(9)(A)(ii) of the Act for departing the United States under an order of removal and was therefore ineligible to adjust status. The Director requested the Applicant to submit a Form I-212, which she filed in February 2019 indicating that she intended to adjust her status to that of a lawful permanent resident in the United States.

In denying the Form I-212, the Director determined that the Applicant's entry without inspection, failure to attend the removal hearing, and noncompliance with the resulting removal order weighed heavily against her. The Director further concluded that the Applicant's inconsistent statements about the timing of her entry into the United States, her marital status, and the number of her grandchildren undermined her overall credibility and constituted additional negative factors.[1] The Director identified the positive factors in the case as the Applicant's employment and family ties in the United States, but determined that they could not be afforded full weight because they were established after she had been ordered removed.

The Director then administratively closed the Applicant's Form I-485, concluding that the Applicant remained in removal proceedings and was ineligible to adjust her status before U.S. Citizenship and Immigration Services (USCIS).[2]

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[1] The Director also found that the Applicant did not establish she would not be a public charge. We note, however, that the record contains an affidavit of support (Form I-864) submitted on the Applicant's behalf by her U.S. citizen petitioner son, which was determined sufficient to establish that the Applicant had adequate means of financial support and was *not likely* to become a public charge.

[2] USCIS does not have jurisdiction to grant or deny a request for adjustment of status under section 245 of the Act in any case in which the noncitizen is a respondent in removal or deportation proceedings before EOIR unless the noncitizen has been placed in proceedings as an "arriving alien." 8 C.F.R. §§ 245.2(a)(1), 1245.2(a)(1).

In support of the instant appeal, the Applicant submits additional evidence of her family ties in the United States. She explains that any inconsistencies on her asylum and TPS applications were caused by the fact that she did not know the exact location where she entered the United States and that she is illiterate and cannot read and write except for her own name. She further states that she did not know how to attend her removal hearing in 1997, and that she remained in the country because shortly thereafter she was granted TPS. The Applicant reiterates that she has a U.S. citizen son and 15 grandchildren in the United States and that denial of permission to reapply for admission will cause undue hardship to her and her family members.

We acknowledge the submission of the supplemental evidence and the Applicant's statements. Nevertheless, for the following reasons, we will dismiss her appeal.

The Applicant has not demonstrated that she is eligible to adjust her status before USCIS. As the Director previously determined when administratively closing the Applicant's Form I-485, the Applicant remains in removal proceedings on account of the in absentia removal order that an Immigration Judge issued in 1997. 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 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 (5th Cir. 2022); *see also* 7 *USCIS Policy Manual* A.3(D) n. 23, https://www.uscis.gov/policy-manual.

The Applicant filed her application for permission to reapply with USCIS in conjunction with her application to adjust status. Because the Applicant remains in removal proceedings, USCIS does not have jurisdiction over her adjustment of status request and has administratively closed her underlying Form I-485. We will therefore dismiss the Applicant's appeal of the Form I-212 denial as a matter of discretion. *See Matter of Martinez-Torres*, 10 I&N Dec. 776, 776-77 (Reg'l Comm'r 1964); *see also I.N.S. v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

ORDER: The appeal is dismissed.