U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27773055

Date: OCT. 3, 2023

Appeal of Newark, New Jersey Field Office Decision

Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal

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, 8 U.S.C. § 1182(a)(9)(A)(iii).

The Director of the Newark, New Jersey Field Office, denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), as a matter of regulation and a matter of discretion. Specifically, the Director found that the Applicant, upon her departure, would become inadmissible under section 212(a)(6)(B) of the Act for failing to appear at her removal proceeding, a ground of inadmissibility for which there is no waiver available. The Director also determined that a favorable exercise of discretion was not warranted because the negative factors outweighed the positive factors in the case. On appeal, the Applicant contends that she has established eligibility for the benefit sought.

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.

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, other than an "arriving alien," who has been ordered removed under section 240 of the Act, 8 U.S.C. § 1229a, 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. Noncitizens 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) 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.

Section 212(a)(6)(B) of the Act provides that any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the noncitizen's inadmissibility or deportability, and who seeks admission to the United States within five years of the noncitizen's subsequent departure or removal, is inadmissible. There is no waiver for this inadmissibility.

The Applicant has remained in the United State since being ordered removed and upon her departure she will become inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act for having been previously ordered removed. The issue on appeal is whether the Applicant should be granted conditional approval of her application under the regulation at 8 C.F.R. § 212.2(j) before departing the United States to apply for an immigrant visa. We agree with the Director's determination that a favorable exercise of discretion is not warranted in her case and find that no purpose would be served in approving her Form I-212.

On appeal, counsel for the Applicant contends that because the Applicant intends to apply for an immigrant visa abroad, the U.S. Department of State (DOS) will make the final determination regarding her inadmissibility under section 212(a)(6)(B) and it is not the "the job of the Service to make a determination of Applicant's admissibility regarding this issue." Counsel also asserts on appeal that the Applicant had reasonable cause for failing to attend her removal hearing and has demonstrated that she merits a favorable exercise of discretion. In her affidavit, the Applicant maintains that a notario "filed some paperwork for me but never explained what application or what the process would mean after paperwork was submitted." The Applicant also contends that she "never received any paperwork in regards to my case" and she "did not know" that she had an order of removal until she met with her current attorneys about her case

The Applicant was served a Notice to Appear on October 8, 1997; the Notice to Appear provided the time, date, and location of her hearing and detailed the consequences of "failure to appear" as provided in the Act. Despite the Applicant's contention that she "never received any paperwork" the record establishes that per the instructions on the above-referenced Notice to Appear, she personally appeared before the immigration judge on February 26, 1998. Proceedings were subsequently adjourned until [redacted] 1998 but the Applicant did not attend the [redacted] 1998 hearing and was ordered removed by an immigration judge *in absentia* on [redacted] 1998. An application for permission to reapply for admission is denied, in the exercise of discretion, to a noncitizen who is mandatorily inadmissible to the United States under another section of the Act. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964). Because the Applicant will depart the United States and apply for an immigrant visa, the U.S. Department of State will make the final determination concerning her eligibility for a visa, including whether the Applicant is inadmissible under section 212(a)(6)(B) or under any other ground. However, evidence that the Applicant's departure will trigger inadmissibility under a separate ground for which no waiver is available is relevant to determining whether permission to reapply for admission should be granted as a matter of discretion, as no purpose would be served in granting the application under these circumstances. *See Matter of Martinez-Torres*, 10 I&N Dec. 776, 776-66 (Reg'l Comm'r 1964) (stating that, when the applicant is mandatorily inadmissible to the United States under a provision of the Act, "no purpose would be served in granting" the Form I-212).

Consequently, we find no error in the Director's denial of the application as a matter of regulation and a matter of discretion, and we need not address the evidence in the record relating to the positive and negative factors in the case or determine whether a favorable exercise of discretion would be warranted. The application will therefore remain denied.

ORDER: The appeal is dismissed.