U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27943136

Date: OCT. 19, 2023

Appeal of Nebraska Service Center Decision

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

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), because she is inadmissible for having been previously ordered removed. *See* section 212(a)(9)(A)(ii) of the Act.

The Director of the Nebraska Service Center denied the application. The Director noted the Applicant's inadmissibility for alien smuggling pursuant to section 212(a)(6)(E) of the Act and concluded that because the Applicant is statutorily ineligible for a waiver of said inadmissibility, her request for permission to reapply for admission should be denied as a matter of discretion. The matter is now before us on appeal. 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, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any noncitizen, other than an arriving alien described in section 212(a)(9)(A)(i), 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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) 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) 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.

Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *See Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). However, when an applicant will remain mandatorily inadmissible or excludable from the United States, no purpose would be served in granting the application for permission to reapply. *Matter of*

Martinez-Torres, 10 I&N Dec. 776 (Reg'l Comm'r 1964); *Matter of J-F-D-*, 10 I&N Dec. 694 (Reg'l Comm'r 1963)

Section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), states that any noncitizen who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other noncitizen to enter or to try to enter the United States in violation of law is inadmissible, with a waiver authorized under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11).

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS,* 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS,* 87 F3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case."). Because the Applicant is residing abroad and applying for an immigrant visa, the U.S. Department of State makes the final determination concerning admissibility and eligibility for a visa. Here, a consular officer has determined that the Applicant knowingly assisted, abetted, or aided two individuals to enter, or try to enter, the United States in violation of law. The consular officer therefore found that the Applicant was inadmissible to the United States under section 212(a)(6)(E)(i) of the Act for alien smuggling.

On appeal the Applicant has not established that she assisted individuals with a relationship listed in section 212(d)(11) of the Act to try to enter the United States. She is thus statutorily ineligible to apply for a waiver of section 212(a)(6)(E)(i) inadmissibility for alien smuggling.[1] Because the Applicant remains mandatorily inadmissible to the United States, we will dismiss the instant appeal of the denial of the Form I-212 as a matter of discretion as its approval would serve no purpose. *Matter of Martinez-Torres, supra*; *Matter of J-F-D, supra.* Accordingly, the Applicant's application for permission to reapply for admission will remain denied.

ORDER: The appeal is dismissed.

[1]The Applicant also appears to be inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act for falsely claiming U.S. citizenship. The record indicates that in August 2021 the Applicant applied for admission and presented a fraudulently obtained U.S. passport. There is no waiver for this ground of inadmissibility. Section 212(a)(6)(C)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii)(I).