U.S. Citizenship and Immigration Services

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

In Re: 26480854

Date: OCT. 30, 2023

Appeal of St. Thomas, U.S. Virgin Islands Field Office Decision

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

The Applicant is inadmissible for having been previously ordered removed as an aggravated felon. He seeks permission to reapply for admission to the United States under sections 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(9)(A)(iii).

The Director of the St. Thomas, U.S. Virgin Islands Field Office denied the application. The Director first detailed that the Applicant's aggravated robbery conviction renders him permanently inadmissible to the United States as an aggravated felon. The Director also determined that a favorable exercise of discretion was not warranted because the negative factors outweighed the positive factors in the Applicant's case. On appeal, the Applicant contends that that he is eligible for the benefit sought.[1]

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 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 at any time in the case of a noncitizen 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) 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 continuous territory, the Secretary of Homeland Security has consented to the noncitizen 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).

[1] While the Applicant indicated that a brief and/or additional evidence in support of the instant appeal would be submitted to this office within 30 calendar days of filing the appeal, this office has not received such documentation as of today.

The record establishes that the Applicant was previously admitted to the United States as a lawful permanent resident, having entered the United States with an immigrant visa in December 1981. In 1988, the Applicant was convicted of aggravated robbery, a first degree felony, and was sentenced to 15 years imprisonment and ordered to pay a fine. The Applicant was removed as a result of his aggravated felony conviction in 2004.

We adopt and affirm the Director's decision with the comments below. *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 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

In addition to the negative factors discussed in detail in the Director's decision, the present record does not establish that the Applicant has applied for an immigrant visa or has a basis for returning to the United States as an immigrant. Moreover, while we acknowledge that the Applicant is abroad and the U.S. Department of State would make the final determination concerning his eligibility for a visa, it appears that the Applicant may be deemed inadmissible pursuant to section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), which provides that any noncitizen convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Noncitizens who have previously been admitted as lawful permanent residents are ineligible to obtain a waiver of section 212(a)(2)(A) inadmissibility if, since the date of such admission, the noncitizen has been convicted of an aggravated felony. Section 212(h)(2) of the Act. Evidence of the Applicant's inadmissibility under a separate ground for which no waiver is available is relevant to determining whether a Form I-212 should be granted as a matter of discretion.

The appeal of the denial of the Form I-212 will therefore be dismissed as a matter of discretion.

**ORDER:** The appeal is dismissed.