U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16174090

Date: APR. 04, 2022

Appeal of Queens 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), because she will be inadmissible upon departing from the United States for having been previously ordered removed.

The Director of the Queens Field Office denied the application, concluding that the Applicant was inadmissible under section 212 (a)(9)(A)(ii) of the Act and did not establish that a favorable exercise of discretion was warranted in her case. In the denial, the Director also noted that the Applicant is inadmissible under section 212(a)(6)(B) of the Act for having failed to appear at her removal hearing, and that this was a negative factor.

The matter is now before us on appeal. In the appeal, the Applicant states that she had reasonable cause for failing to appear at her hearing, and therefore asserts that she is not inadmissible under section 212(a)(6)(B) of the Act.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking permission to reapply for admission to the United States and has been found inadmissible for having been previously ordered removed.

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any alien, 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."

Foreign nationals 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."

Section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), provides that any alien "who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible." There is no waiver for this inadmissibility.

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). 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. *See Matter of Tin,* 14 I&N Dec. 371 (Reg'l Comm'r 1973); *see also Matter of Lee, supra*, at 278 (Finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character, and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience").

II. ANALYSIS

The record indicates that the Applicant entered the United States using fraudulent documents on April 18, 1997. After she submitted an application for asylum on November 8, 1997, her case was transferred to an immigration judge, and after failing to appear for a hearing she was ordered removed in absentia on [redacted] 1999. *See* section 240(b)(5)(A) of the Act, 8 U.S.C. § 1229a(b)(5)(A) (stating that any individual who does not attend a required hearing "shall be ordered removed in absentia if [the Department of Homeland Security (DHS)] establishes by clear, unequivocal, and convincing evidence that . . . written notice was . . . provided and that the [individual] is removable"). The Applicant challenged this ruling in a motion to reopen, which was denied by the immigration judge on [redacted] 2001, as was a subsequent appeal to the Board of Immigration Appeals (Board) on December 12, 2002. She followed with several additional motions related to her asylum claim, the last of which was denied by the Board on May 3, 2013. The Applicant has not departed the United States.

The Applicant filed her Form I-212 on June 5, 2018, and a handwritten note stating "601A waiver filing" appears to indicate that she is seeking conditional approval of this application under the regulation at 8 C.F.R. § 212.2(j) before departing the United States to apply for an immigrant visa.[1]

[1] The Applicant is the beneficiary of a Form I-130 petition by her United States citizen mother, approved on December 16, 2009.

As noted above, the Applicant asserts on appeal that she has reasonable cause for failing to appear at her hearing. Specifically, she claims that she was told by her counsel at the time, [redacted] that the hearing on [redacted] 1999 was to be adjourned and that she would be contacted regarding the next scheduled hearing. She asserts that when she later contacted [redacted]s office, she was told that she'd been ordered removed and that nothing could be done at the time. The Applicant states that she only realized that [redacted] had not represented her properly after she contacted another attorney months later, who then filed the first motion to reopen mentioned above. A copy of the motion and the Applicant's affidavit, which include these same statements, is included with the appeal.

There is no statutory definition of the term "reasonable cause" as it is used in section 212(a)(6)(B) of the Act, but guiding U.S. Citizenship and Immigration Services (USCIS) policy provides that "it is something not within the reasonable control of the [applicant]."[2] Here, the record indicates that the immigration judge considered these same arguments on motion, but noted that the Applicant failed to act for two years despite being aware of the removal order. In addition, the judge noted that [redacted] or someone from her office attended the hearing on [redacted] 1999. Further, the record includes a letter from [redacted] in which she responds to the Applicant's successive attorney, stating that she did not tell the Applicant that she did not have to appear for the hearing, and that her office had been unable to contact the Applicant prior to the hearing. Finally, a letter from the Departmental Disciplinary Committee of the New York Supreme Court confirms its review of the complaint filed by the Applicant against [redacted] but states that the investigation was closed since the complaint "was filed to comply with the procedural requirements of the Immigration authorities." Based on this evidence, the Applicant has not established that her failure to attend her hearing was not within her reasonable control.

The Applicant was ordered removed in absentia on [redacted] 1999, and she has not established that she had reasonable cause for failing to appear for that hearing. 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. at 776-77 . Approving the Form I-212 would serve no purpose as the record indicates that the Applicant will become inadmissible under section 212(a)(6)(B) of the Act upon her departure and remain inadmissible for a period of five years.

III. CONCLUSION

The Applicant has the burden of proof in seeking permission to reapply for admission. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Because the record shows that the Applicant will become inadmissible upon her departure under section 212(a)(6)(B) of the Act, and there is no waiver for this ground of inadmissibility, her application for permission to reapply for admission will remain denied as a matter of discretion.

ORDER: The appeal is dismissed.

[2] 8 *USCIS Policy Manual* I, retired *Adjudicator's Field Manual* Chapter 40.6, https://www.uscis.gov/policymanual.