U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 08769483

Date: APR. 12, 2022

Appeal of San Juan, Puerto Rico Field Office Decision

Form I-212, Application for Permission to Reapply for Admission

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 (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii).

Section 212(a)(9)(A)(i) of the Act provides, in part, that any noncitizen who has been ordered removed as an "arriving alien" either through an expedited removal or at the end of removal proceedings initiated upon arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years 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) 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's reapplying for admission.

The Applicant currently resides in the United States and is seeking conditional approval under the regulation at 8 C.F.R. § 212.2(j) before she departs, as she will be inadmissible upon her departure due to her prior removal order.[1]

The Director of the San Juan, Puerto Rico Field Office denied the application, concluding that the Applicant did not establish eligibility for permission to reapply because she was in removal proceedings[2] and failed to depart the United States, and also did not demonstrate that she was the beneficiary of an approved petition for alien relative. On appeal, the Applicant asserts that she is eligible to seek permission to reapply for admission under section 212(a)(9)(C)(iii) of the Act and she merits approval as a matter of discretion.

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[1] The regulation at 8 C.F.R. § 212.2(j) provides that a noncitizen whose departure will execute an order of removal may, prior to leaving the United States, seek conditional approval of an application for permission to reapply for admission.

[2] The record reflects that the Applicant attempted to enter the United States in 2013 and was issued a Form I-860, Notice and Order of Expedited Removal, for being in violation of section 212(a)(7)(A)(i)(I) of the Act as an immigrant without valid documents. The Applicant did not depart and continues to reside in the United States.

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 withdraw the Director's decision and remand the matter to the Director to adjudicate the Applicant's Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, on its merits.

At the time of filing, the Applicant was the beneficiary of an approved immigrant visa petition for classification as a spouse of a U.S. citizen. The Applicant explained that she intends to seek an immigrant visa at a U.S. consulate abroad and is requesting conditional approval of her Form I-212 pursuant to the regulation at 8 C.F.R. § 212.2(j) before departing from the United States. She further stated that she is seeking advance permission to reapply for admission as a prerequisite to applying for a provisional unlawful presence waiver prior to her departure.[3]

The approval of the Applicant's Form I-212 under these circumstances is conditioned upon departure from the United States and will have no effect if she does not depart. Thus, the Director was incorrect in finding the Applicant could not apply for permission to reapply for admission because she had not departed the United States. As the Director did not assess whether the Applicant merits conditional approval of her application as a matter of discretion, we will remand the matter for the entry of a new decision regarding the Applicant's eligibility.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[3] Pursuant to the regulation at 8 C.F.R. § 212.7(e)(4)(iv), an individual inadmissible under section 212(a)(9)(A) of the Act for having been ordered removed must obtain permission to reapply for admission before applying for a provisional unlawful presence waiver. *See also* page 2 of the Instructions for Form I-601A, Application for Provisional Unlawful Presence Waiver, https://www.uscis.gov/i-601a.