U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11900049

Date: APR. 13, 2022

Appeal of Raleigh-Durham, North Carolina 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 under section 212(a)(9)(A)(ii) of the Act.

The Director of the Raleigh-Durham, North Carolina Field Office denied the application as a matter of discretion, concluding that the Applicant would become inadmissible upon her departure under section 212(a)(6)(B) of the Act, for failing to attend removal proceedings, and there is no waiver for this ground of inadmissibility. The matter is now before us on appeal.

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 remand the matter to the Director for additional review and the entry of a new decision.

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."

8 C.F.R. § 212.2(j) states that a noncitizen whose departure will execute an order of removal shall receive a conditional approval depending upon his or her satisfactory departure. However, the grant of permission to reapply does not waive inadmissibility under section 212(a)(9)(A) of the Act resulting from exclusion, deportation, or removal proceedings which are instituted subsequent to the date permission to reapply is granted.

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)(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.

II. ANALYSIS

The Applicant is the subject of an unexecuted *in absentia* removal order, dated [redacted] 1999, and will be inadmissible upon her departure from the United States under section 212(a)(9)(A)(ii) of the Act. The Applicant is seeking conditional approval of her Form I-212 under 8 C.F.R. § 212.2(j) before departing the United States. The Applicant contends that she is eligible to seek Form I-212 relief and that her case merits approval as a matter of discretion.

In denying the application, the Director found that the Applicant's departure from the United States would subject her to inadmissibility under section 212(a)(6)(B) of the Act for failing to attend her removal hearing. As there is no waiver for this ground of inadmissibility, she would therefore remain inadmissible for five years even if her Form I-212 were approved. The Director stated that a Notice to Appear was personally served to the Applicant, who was 11 years old at the time, which provided the date and time of her removal hearing and the consequences if she failed to appear for the hearing. He further stated that the Applicant "offered neither any assertions nor any objective evidence to establish a reasonable cause for not appearing" at her removal hearing. In his decision, he does not discuss evidence submitted with the Form I-212, including a statement from the Applicant describing the circumstances of her entry with her aunt, her reliance on her guardian to provide her with instruction once arriving in a new country, and her inability as a child of 11 years to independently provide an updated mailing address or attend immigration proceedings in person.

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 alien." Memorandum from Lori Scialabba, Associate Director for Refugee, Asylum & International Operations Directorate, et al., USCIS, HQ 70/21.1 AD07-18, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators. Revisions to the Adjudicator's Field Manual (AFM) to Include a New Chapter*

40.6 (AFM Update AD07-18) (Mar. 3, 2009). In the present case, the Applicant entered the United States without inspection at the age of 11 with her aunt. She was therefore placed in removal proceedings and ordered removed as inadmissible under section 212(a)(6)(A) of the Act. She does not dispute that her order of removal renders her inadmissible under section 212(a)(9)(A) of the Act. We note, however, that the Applicant's aunt, as evidenced by the name, fingerprint and signature in the Certificate of Service section, accepted service of the Notice to Appear.

Given the facts presented in this case, it appears that the Applicant may have established reasonable cause for failing to attend removal proceedings. However, we note that the Applicant will depart the United States and apply for an immigrant visa, and a U.S. Department of State consular officer will make a final determination of the Applicant's admissibility under section 212(a)(6)(B) and any other applicable section of the Act at that time. Therefore, the Director's decision is withdrawn. We will remand the matter, however, for the Director to consider whether the Applicant has shown that she otherwise merits permission to reapply for admission to the United States in the exercise of discretion.

In his decision, the Director stated, "USCIS will not address the evidence in the record relating to the positive and negative factors in your case or determine whether a favorable exercise of discretion would be warranted, as you would remain inadmissible to the United States for five years even if your consent to apply was granted." On remand the Director should weigh all of the favorable equities against the unfavorable factors to determine whether the Applicant has established that a favorable exercise of discretion is warranted in her case.

While the unfavorable factors in the Applicant's case consist of her immigration violations, the record demonstrates numerous positive equities in the Applicant's case. These include her length of residence, significant family and other ties to the United States, and her lack of a criminal record. The record contains financial records, a psychological evaluation, and letters of support from friends and employers. We also take notice of conditions in Honduras, including a U.S. Department of State warning to reconsider travel to Honduras due to reports of widespread violent crime and gang activity, such as extortion, violent street crime, rape, and narcotics and human trafficking. *See* U.S. Department of State, *Honduras Travel Advisory (Level 3: Reconsider Travel)*, April 6, 2022 (https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Honduras.html).

Because the Director declined to review the evidence in the record, and given the favorable factors with the lack of analysis in the decision, we are remanding the matter for the Director to review the entire record and determine whether the Applicant merits a conditional approval of her Form I-212 in the exercise of discretion. On remand, the Director shall review and weigh all favorable and unfavorable factors with consideration to all evidence presented.

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