U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13296977

Date: APR. 18, 2022

Appeal of New York, New York 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). The Director of the New York, New York Field Office denied the Applicant's application and the matter is now before us appeal. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in pertinent part, that any noncitizen 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 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 re-embarkation 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.

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 ground of inadmissibility.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant entered the United States without inspection, authorization, or parole in April 2007.[1] In [redacted] 2007, the Applicant was placed into removal proceedings. On [redacted] 2008, the Applicant failed to appear for a hearing and was ordered removed *in absentia*. *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 has not departed the United States.

The Applicant filed the instant Form I-212, Application for Permission to Reapply for Admission (Form I-212), in October 2017, seeking conditional approval of the application prior to his departure from the United States under 8 C.F.R. § 212.2(j) (enabling an applicant "whose departure will execute an order of deportation" to seek conditional approval depending upon their "satisfactory departure"). The Director denied the application as a matter of discretion, concluding that the Applicant is inadmissible under sections 212(a)(9)(A)(ii) and 212(a)(6)(B) of the Act. In addition, the Director noted that the Applicant has not established that he has applied for, or been approved for, a waiver under section 212(a)(6)(C)(i) of the Act for fraud or willfully misrepresenting a material fact.[2]

On appeal, the Applicant limits his arguments to the inadmissibility ground under section 212(a)(6)(C)(i) of the Act and does not address the inadmissibility grounds at sections 212(a)(9)(A)(ii) and 212(a)(6)(B) of the Act. While the Applicant is correct that "waivers of this ground of inadmissibility are available," applications for a waiver for fraud or willfully misrepresenting a material fact are submitted on Form I-601, Application to Waive Inadmissibility Grounds.

As noted above, the record reflects that the Applicant was ordered removed *in absentia* and has not shown reasonable cause for his failure to appear for his removal hearing. Approval of Form I-212 would serve no purpose as the Applicant will become inadmissible under section 212(a)(6)(B) of the Act upon his departure and remain inadmissible for a period of five years. 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.

III. CONCLUSION

As the record indicates that the Applicant will become inadmissible upon his departure under section 212(a)(6)(B) of the Act, and there is no waiver available for this ground of inadmissibility, his application for permission to reapply for admission will remain denied as a matter of discretion.

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[1] As explained by the Director, the Applicant did not provide his legal name or correct date of birth when apprehended, and he misrepresented himself as a minor. Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act.

[2] Because the Applicant intends to apply for an immigrant visa, the U.S. Department of State (DOS) will make the final determination concerning admissibility and eligibility for the visa.

ORDER: The appeal is dismissed.