U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 14375171

Date: APR. 19, 2022

Appeal of Los Angeles Field Office Decision

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

The Applicant, who has an outstanding order of removal, 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. § 1 182(a)(9)(A)(iii).

The Director of the Los Angeles, California Field Office denied the application as a matter of discretion, concluding that the favorable factors did not outweigh the unfavorable factors in the case. 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

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, other than an "arriving alien," who has been ordered removed under section 240 of the Act, 8 U.S.C. § 1229a, or any other provision of law, or who 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, 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 he is seeking conditional approval of his application under the regulation at 8 C.F.R. § 212.2(j) before departing the United States to apply for an immigrant visa. The approval of his application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if he fails to depart.

II. ANALYSIS

The record reflects that an Immigration Judge ordered the Applicant removed in absentia on [redacted] 2007, and subsequently denied his motion to reopen on January 29, 2019. The Director denied the Applicant's Form I-212, determining that the favorable factors did not outweigh the negative factors. On appeal, the Applicant contends that the Director erred because his "I-212 Application was approved

by the USCIS on June 3, 2020," but "the Los Angeles District Office denied Appellant's I-212 Application (the same application as they have the same case number) on August 17, 2020."

U.S. Citizenship and Immigration Services (USCIS) systems show that the Director approved the application on June 3, 2020. However, on June 19, 2020, the Director issued a notice reopening the proceeding and reconsidering the approval of the application. When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision, and the new decision may be unfavorable to the affected party, the officer shall give the affected party 30 days after service of the motion to submit a brief. 8 C.F.R. § 103.5(a)(5)(ii). In the absence of clear evidence to the contrary, adjudicators must presume that government officials properly discharged their official duties. *United States v. Armstrong*, 517 U.S. 456, 464 (1996); *Matter of P-N-*, 8 I&N Dec. 456, 458 (BIA 1959). This "presumption of regularity" requires us to presume the accuracy of information recorded in USCIS systems and thus the Director's notice of reopening and reconsideration by mail on June 19, 2020. After reopening the proceeding and reconsidering his previous decision, the Director denied the application on August 17, 2020.

Because the regulation at 8 C.F.R. § 103.5(a)(5)(ii) allows USCIS to reopen proceedings and reconsider prior decisions, which the Director did in this case, the record does not support the Applicant's claim of procedural error. Moreover, as the Applicant did not contest the findings of the Director relating to the merits of the decision, we consider those issues to be waived. Issues or claims that are not raised on appeal are deemed to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).[1]

ORDER: The appeal is dismissed.

[1] As he did not attend or remain in attendance for his removal proceeding in 2007 and ordered removed in absentia and has not departed the United States, the Applicant is also inadmissible under section 212(a)(6)(B) of the Act, and there is no waiver for this ground of inadmissibility. Therefore, even if he were currently eligible to seek relief under the Act, no purpose would be served in granting his permission to reapply for admission, as he would remain inadmissible under section 212(a)(6)(B) of the Act until he leaves the United States and seeks admission after five years from his departure date. When an applicant will remain mandatorily inadmissible or excludable from the United States, no purpose would be served in granting an 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).