



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 16108406

Date: APR. 19, 2022

Appeal of Boston 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). U.S. Citizenship and Immigration Services (USCIS) may grant permission to reapply for admission to the United States in the exercise of discretion for those who establish their eligibility.

The Director of the Boston, Massachusetts Field Office denied the Form I-212 stating that filing a Form I-212 is not allowed if the Applicant is admissible under section 212(a)(9)(C) 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 remand the matter to the Director for the entry of a new decision.

On appeal, the Applicant asserts that he has never departed the United States after his removal order and is eligible for conditional approval of the application under 8 C.F.R. §212.2(j). The record reflects that an Immigration Judge denied the Applicant's asylum application and ordered him removed in [] 2015. Subsequently, the Board of Immigration Appeals affirmed the Immigration Judge's decision. The Applicant does not claim, nor does the record show, that he departed the United States since being ordered removed. Thus, the Director erred in finding the Applicant inadmissible under section 212(a)(9)(C)(i) of the Act for having entered the United States without being admitted after having been ordered removed. The record establishes that the Applicant currently resides in the United States and is seeking conditional approval of the application under the regulation at 8 C.F.R. § 212.2(j) before he departs, as he will be inadmissible upon his departure due to his prior removal order under section 212(a)(9)(A)(ii) of the Act. The approval of the 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.

Because the Applicant is eligible to apply for a conditional Form I-212 prior to his departure, we are remanding the matter for the Director to adjudicate the application on the merits.

ORDER: The decision of the Director is withdrawn.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