U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17383697

Date: APR. 20, 2022

Appeal of St. Thomas, Virgin Islands Field Office Decision

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

The Applicant seeks approval of his application for permission to reapply for admission to the United States

The Director of the St. Thomas, Virgin Islands Field Office denied the application, concluding that no purpose would be served in approving the application because the Applicant's Form I-130, Petition for Alien Relative, had been terminated after the death of the Applicant's spouse and there was no pending Form I-485, Application to Register Permanent Residence or Adjust Status.

On appeal, the Applicant contends the Director erred in determining the I-130 was terminated due to death of the petitioning spouse as, under USCIS policy, an approved I-130 is automatically converted to an approved I-360 upon the petitioner's death.

The record reflects the Applicant was last admitted to the U.S. in C-1 non-immigrant status reserved, in part, for certain alien crewman and was employed with [redacted] Lines as a staff steward from 1995 to 2000. The Applicant married a U.S. citizen in [redacted] 2004 through whom he sought to adjust his status based on a combined I-130 and I-485 that the Applicant's spouse filed on his behalf under Section 245(a) of the Immigration and Naturalization Act (the Act). The Applicant's I-485 was denied on April 28, 2006, due to the beneficiary's failure to provide a Form I-864, Affidavit of Support, while his I-130 was approved on February 5, 2007. The Applicant was subsequently placed into removal proceedings on [redacted] 2007, for remaining in the U.S. for a time longer than permitted in violation of section 237(a)(1)(B) of the Act. During his removal hearing, the Applicant filed a new Form I-485 with the Department of Justice Executive Office for Immigration Review (EOIR) requesting adjustment of status but testified that he had been employed at [redacted] while admitted on a C-1 visa. The immigration judge found that the Applicant last entered the U.S. as a crewman that is statutorily ineligible to adjust status under section 245(a) of the Act, and ordered the Applicant removed on [redacted] 2011, as well as pretermitting the Applicant's application for adjustment of status.[1]

[1] The immigration judge's decision was then upheld by the BIA and the 11th circuit.

As noted by the Director, the Applicant was found ineligible for adjustment of status before U.S. Citizenship and Immigration Services.[2] Additionally, the Applicant's application to adjust status filed with EOIR during his removal hearing was pretermitted due to the Applicant being statutorily ineligible for adjustment of status. Therefore, no purpose would be served in adjudicating his application for permission to reapply as it would not result in his adjustment of status to that of an alien lawfully admitted for permanent residence.[3] The appeal of the denial of the Form I-212 will therefore be dismissed as a matter of discretion.[4]

ORDER: The appeal is dismissed.

[2] We acknowledge the Director's determination that the I-130 being terminated due to the death of the petitioner was in error since it converts to an I-360 under section 204(l) of the Act, however the Applicant does not have a pending adjustment of status application and therefore no purpose would be served in approving the application on appeal for the reasons set forth in this decision.

[3] We recognize that individuals who currently reside in the United States may seek conditional approval of a Form I-212 prior to their departure from the United States under the regulation at 8 C.F.R. § 212.2(j). The record fails to establish that the Applicant intends to apply for an immigrant visa and is thus seeking conditional permission to reapply for admission prior to departing the United States.

[4] We further note that as the Applicant asserts that he has not departed the United States pursuant to the removal order, the record does not support a finding that he is currently inadmissible under section 212(a)(9)(A) of the Act for having departed the United States after being ordered removed.