U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16494445

Date: APR. 22, 2022

Motion on Administrative Appeals 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), for having been previously removed to Mexico pursuant to a removal order. *See* 8 U.S.C. § 1182(a)(9)(A)(ii).

The Director of Nebraska Service Center denied the Applicant's Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, concluding that he would remain inadmissible to the United States even if his Form I-212 application were approved. The Director noted in the October 2018 decision that the Applicant had also filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, which the Director denied, concluding that the Applicant was not eligible to file a Form I-601 application.

We dismissed the Applicant's appeal of his Form I-212 application denial, as well as his appeal of his Form I-601 application denial. We explained in our May 2019 dismissal of his I-212 application appeal that he was "not yet eligible to file the Form I-212 . . . [because in order to file,] an individual must be an applicant for an immigrant visa, adjustment of status . . . , or a nonimmigrant visa . . . ." We also stated in our May 2019 decision that we had, in a separate decision, dismissed the Applicant's appeal of his Form I-601 application denial "because [he] had not applied for an immigrant visa and [had not] been found inadmissible by a consular officer." We stated that he "was not yet eligible to file the Form I-601 [application]" to waive his ground of inadmissibility relating to his criminal history. Additionally, we noted in our May 2019 decision, in a footnote, that he "may be ineligible for a waiver of inadmissibility [because] he was convicted of a controlled substance violation that did not relate to a single offense of simple possession of 30 grams or less of marijuana."[1] *See* Section 212(h) of the Act; *See also* Section 212(a)(2)(A)(i)(II).

Subsequently, the Applicant filed two motions to reconsider the matter and reopen the proceeding, which we dismissed on the grounds that the filings failed to satisfy the regulatory requirements for motions. In our last motion decision, dated September 21, 2020, we reiterated that "his [Form I-212] application [was] premature as he [was] residing outside of the United States but ha[d] not applied for

[1] We acknowledged in our May 2019 decision dismissing the Applicant's appeal of his Form I-212 application denial that "a determination of his inadmissibility for [any ground] must be made by a consular officer after he has applied for a visa."

a visa." After reviewing his motion submission, we concluded that he did "not submit[] evidence of new facts pertaining to his eligibility, and he [did] not cite any pertinent precedent decisions to show that our previous decision [issued in February 2020] was based on an incorrect application of law or U.S. Citizenship and Immigration Services [USCIS] policy."

The matter is now before us on a third motion filing. In an October 2020 statement, the Applicant states that he "hereby make[s] a motion to reopen or reconsider" of our last decision, dated September 21, 2020. He claims on motion, as he had asserted in previous filings, that "[his] family, [his] whole family is in the United States of America and they are suffering an extreme hardship." He states that he is "very sorry for all the mistakes [he] made in [his] youthful years," and that his "favorable factors outweigh[] the unfavorable factors in [his] case."

Upon review, we will dismiss the combined motions.

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

On motion, the Applicant does not establish, or even allege, that our previous decision, dated September 21, 2020, was based on an incorrect application of law or USCIS policy, or that the decision was incorrect based on the evidence before us at the time we issued the decision. *See* 8 C.F.R. § 103.5(a)(3). Additionally, on motion, the Applicant does not submit evidence of new facts pertaining to his eligibility for the Form I-212 application. *See* 8 C.F.R. § 103.5(a)(2). Accordingly, the motion submission does not meet the requirements for a motion to reconsider the matter or a motion to reopen the proceeding. *See* 8 C.F.R. § 103.5(a)(3); 8 C.F.R. § 103.5(a)(2). We will therefore dismiss the combined motions.

ORDER: The motion to consider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.