U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 09637346

Date: APR. 26, 2022

Appeal of Manchester, New Jersey 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), because he will be inadmissible upon departing from the United States for having been previously ordered removed. Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion.

The Director of the Manchester, New Jersey Field Office denied the application, concluding that the Applicant would become inadmissible under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend removal proceedings without reasonable cause, and there is no waiver for this ground of inadmissibility. The matter is now before us on appeal.

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, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any noncitizen, other than an arriving alien described in section 212(a)(9)(A)(i), 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 an alien 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) 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.

Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior

deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973).

Any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the noncitizen's inadmissibility or deportability and who seeks admission to the United States within five years of such noncitizen's subsequent departure or removal is inadmissible. Section 212(a)(6)(B) of the Act. There is no waiver for this inadmissibility.

II. ANALYSIS

The record indicates that the Applicant will become inadmissible upon departing the United States pursuant to section 212(a)(9)(A)(ii) of the Act for having been previously ordered removed. The issue raised on appeal is whether the Applicant should be granted conditional approval of his Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, in the exercise of discretion.

The Applicant entered the United States without inspection on or about [redacted] 2004. He was subsequently apprehended by immigration officials and was placed into removal proceedings before an Immigration Judge. In [redacted] 2004, 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 remained in the United States and subsequently filed a motion to reopen his removal proceedings in [redacted] 2019, which the Immigration Judge denied in [redacted] 2019. The Applicant has not departed the United States.

The Applicant filed the instant Form I-212 application in July 2019, seeking conditional approval of the application prior to his departure from the United States under 8 C.F.R. § 212.2(j), which enables an applicant "whose departure will execute an order of deportation" to seek conditional approval depending upon their "satisfactory departure." The Director denied the application, concluding that the Applicant would become inadmissible under section 212(a)(6)(B) of the Act for failing to attend removal proceedings without reasonable cause, and there is no waiver for this ground of inadmissibility.

On appeal, the Applicant contends that he is not inadmissible because he had reasonable cause for failing to attend his removal hearing. Specifically, the Applicant contends that he failed to appear for his hearing because he never received the hearing notice. The record reflects that the Applicant was issued a notice to appear (NTA) on [redacted] 2004, which ordered him to appear before an immigration judge in [redacted], Texas with the date and time of the hearing to be set.[1] The Applicant states that

[1] The record indicates that, prior to his release on recognizance, the Applicant was served with and signed an NTA advising

he was instructed to provide an address as soon as he was able to do so, and states that although he mailed the court his new address, he never received the NTA.

Based upon the evidence provided, the Applicant has not demonstrated that he had reasonable cause for not attending his removal hearing. There is no statutory definition of the term "reasonable cause" as it is used in section 212(a)(6)(B) of the Act, but guiding USCIS policy provides that "it is something not within the reasonable control of the [applicant]."[2] The record does not contain a Form EOIR-33 to establish that the Applicant notified the Immigration Court of his address as required. We further note that the Immigration Judge rejected the Applicant's claim that his *in absentia* removal order should be rescinded because he did not receive notice of his hearing. On appeal, the Applicant does not submit evidence to support his claim that he was unaware of his scheduled hearing, or that there were any circumstances beyond his reasonable control preventing him from attending the hearing.

The record reflects that the Applicant was ordered removed *in absentia* in [redacted] 2004, and has not shown reasonable cause for his failure to appear for his removal hearing. An application for permission to reapply for admission is denied, in the exercise of discretion, to a foreign national 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. Approving the Form I-212 would serve no purpose as the record indicates that 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.

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.

ORDER: The appeal is dismissed.

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him that he was "required to provide [legacy Immigration and Naturalization Service (INS)], in writing with [his] full mailing address and phone number" using a Form EOIR-33, Change of Address. The Applicant's signed NTA also indicates that he was "provided oral notice in the Portuguese language of the time and place of his or her removal hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act."

[2] Memorandum from Lori Scialabba, Associate Director for Refugee, Asylum & International Operations Directorate, et al., USCIS, HQ 70/21.1 AD07-18, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators. Revisions to the Adjudicator's Field Manual (AFM) to Include a New Chapter 40.6* (AFM Update AD07-18)(Mar. 3, 2009).