



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

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

In Re: 16272096

Date: APR. 26, 2022

Appeal of Nebraska Service Center Decision

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

The Applicant will be inadmissible upon her departure from the United States for having been previously ordered removed and 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).

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, other than an “arriving alien,” who has been ordered deported or 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 Director of the Nebraska Service Center denied the application, finding that “[b]ecause you have not been interviewed and because USCIS has withdrawn your Form I-601, you would remain inadmissible to the United States even if USCIS were to grant your Form I-212.” On appeal, the Applicant asserts that she is eligible for conditional approval of the Form I-212 application under 8 C.F.R. § 212.2(j). She explains that she “opted to temporarily withdraw her I-601 application, which was prematurely filed at the time, intending to properly file an I-601A provisional waiver.”¹ The Applicant’s appellate submission includes documentation indicating that she is the beneficiary of an approved immigrant petition as the sister of a U.S. citizen and that she has an immigrant visa application pending with the U.S. Department of State.

The record indicates that the Applicant was found inadmissible pursuant to section 212(a)(6)(A)(i) of the Act and ordered removed on [REDACTED] 2005. She currently resides in the United States and is seeking conditional approval of the Form I-212 application under the regulation at 8 C.F.R. § 212.2(j) before she departs, as she will be inadmissible under section 212(a)(9)(A) of the Act upon her

¹ The Applicant filed her Form I-601, Application for Waiver of Grounds of Inadmissibility, in February 2020 seeking a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act for unlawful presence.

departure due to her prior removal order.² The approval of the application under these circumstances is conditioned upon the Applicant's departure from the United States and does not require an interview or a pending Form I-601 prior to her departure.³ Thus, the Director erred in denying the application based on the conclusion that the Applicant would remain inadmissible because she had not been interviewed and had withdrawn her Form I-601.⁴

Because the Applicant is eligible to apply for a conditional Form I-212 prior to her departure, we are remanding the matter for the Director to weigh the positive and negative factors in the Applicant's case and evaluate whether she merits permission to reapply for admission as a favorable exercise of discretion.

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

² Because departure to apply for an immigrant visa will render the Applicant inadmissible under section 212(a)(9)(A), she will require Form I-212 to apply for consent to reapply for admission to United States. Here, the Applicant has indicated that she is applying for conditional approval of Form I-212 under 8 C.F.R. § 212.2(j) before departing the United States.

³ The Form I-212, "Instructions for Application for Permission to Re-apply for Admission Into the United States After Deportation or Removal," state: "If you have been ordered removed, but have not left the United States, and will be applying for an immigrant visa abroad, you may file your application for consent to reapply before you leave the United States under the removal order. If the agency, at its discretion, chooses to approve your application for consent to reapply, the approval is considered conditional until you actually depart the United States. Consent to reapply for admission in this situation applies only to inadmissibility under INA section 212(a)(9)(A)."

⁴ Applicants may apply for a conditional Form I-212 irrespective of whether they will also require a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act for unlawful presence.