



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 19080626

Date: JUNE 2, 2022

Appeal of Fort Smith, Arkansas Field Office Decision

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

The Applicant will be inadmissible upon his 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). The Director of the Fort Smith, Arkansas Field Office denied the Form I-212, Application for Permission to Reapply for Admission, concluding that the Applicant did not establish eligibility for permission to reapply because he was ordered removed¹ and subsequently failed to depart and remain outside the United States for ten years.

The Applicant filed an appeal of that decision with this office. We review the questions raised in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will remand the matter to the Director for further proceedings. The Applicant is seeking conditional approval of his application under the regulation at 8 C.F.R. § 212.2(j)² before departing from the United States to seek an immigrant visa at a U.S. consulate abroad, as he will be inadmissible upon his departure due to his prior removal order. 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. As the Director did not assess whether the Applicant merits conditional approval of his application as a matter of discretion, we will remand the matter for the entry of a new decision regarding the Applicant's eligibility. As always 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.

ORDER: The decision of the Director is withdrawn.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

¹ The record establishes that the Applicant was ordered removed on [] 2015.

² The regulation at 8 C.F.R. § 212.2(j) provides that an alien whose departure will execute an order of removal may, prior to leaving the United States, seek conditional approval of an application for permission to reapply for admission.