U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20442592

Date: JUN. 6, 2022

Appeal of Harlingen, Texas 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.

The Director of the Harlingen, Texas Field Office denied the application as a matter of discretion, finding that adjudicating the Applicant's request for permission to reapply for admission would serve no purpose because he was also inadmissible under section 212(a)(6)(B) of the Act for having failed to attend his removal proceedings without reasonable cause, a ground of inadmissibility that may not be waived. On appeal, the Applicant submits a brief in support of his application.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. 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 dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides in pertinent part that any noncitizen 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 a noncitizen 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) of the Act if, prior to the date of the re-embarkation 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.

Any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine their inadmissibility or deportability and who seeks admission to the United States within five years of their subsequent departure or removal is inadmissible. Section 212(a)(6)(B) of the Act.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The record indicates that the Applicant entered the United States without inspection, authorization, or parole in [redacted] 2005. He was subsequently apprehended by immigration officials and served a Notice to Appear. In [redacted] 2005, the Applicant failed to appear for a hearing and was ordered removed *in absentia*.[1] *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 has not departed the United States.

The Applicant filed the instant Form I-212, Application for Permission to Reapply for Admission (Form I-212), in September 2020, seeking conditional approval of the application prior to his departure from the United States under 8 C.F.R. § 212.2(j) (enabling an applicant whose departure will execute an order of removal to seek conditional approval depending upon their "satisfactory departure"). The Director denied the application, concluding that the Applicant was inadmissible under section 212(a)(9)(A)(ii) of the Act and did not establish that a favorable exercise of discretion was warranted in his case. In the denial, the Director cited the Applicant's failure to attend his removal hearing in [redacted] 2005, concluding that his violation of U.S. immigration laws and failure to comply with the order from the Immigration Judge weighed against approval of his permission to reapply for admission. According to the Director, the Applicant did not demonstrate that he had reasonable cause for failing to attend his hearing.

On appeal, the Applicant contends that he is not inadmissible because he intends to apply for an immigrant visa abroad, that the U.S. Department of State (DOS) will make the final determination regarding his inadmissibility under section 212(a)(6)(B,[2] and that he has demonstrated he merits a favorable exercise of discretion.

The issue on appeal is whether the Applicant should be granted conditional approval of his application for permission to reapply in the exercise of discretion. We agree with the Director's determination

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[1] Section 212(a)(6)(B) of the Act provides that any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine their inadmissibility or deportability, and who seeks admission to the United States within five years of their subsequent departure or removal, is inadmissible. Section 212(a)(6)(B) of the Act is a separate ground of inadmissibility, applicable upon subsequent departure from the United States, that imposes a penalty specifically for failing to attend a removal hearing.

[2] We acknowledge that, as the Applicant intends to depart the United States and apply for an immigrant visa, DOS will make the final determination concerning his eligibility for a visa, including whether the Applicant is inadmissible under section 212(a)(6)(B) of the Act or under any other ground, when he seeks to reenter. However, evidence that the Applicant's departure will trigger inadmissibility under a separate ground for which no waiver is available is relevant to determining whether permission to reapply for admission should be granted as a matter of discretion, as no purpose would be served in granting the application under these circumstances. *See Matter of Martinez-Torres,* 10 I&N Dec. 776, 776-66 (Reg'l Comm'r 1964) (stating that, when the applicant is mandatorily inadmissible to the United States under a provision of the Act, "no purpose would be served in granting" the Form I-212).

that a favorable exercise of discretion is not warranted in his case and find that no purpose would be served in approving his Form I-212, as the record indicates that he would become inadmissible upon departure from the United States pursuant to section 212(a)(6)(B) of the Act, a ground for which no waiver is available.

Based upon the evidence provided, the Applicant will become inadmissible upon his departure for a period of five years for failure to appear at his removal hearing. Under these circumstances, no purpose would be served by determining whether the Applicant merits approval of his application as a matter of discretion because he would remain inadmissible for five years without a possibility to apply for a waiver. Consequently, we find no error in the Director's denial of the application in the exercise of discretion, and we need not address the evidence in the record relating to the positive and negative factors in the case or determine whether a favorable exercise of discretion would be warranted. The application will therefore remain denied.

ORDER: The appeal is dismissed.