U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18743559

Date: JUN. 08, 2022

Appeal of Harlingen, Texas Field Office Decision

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

The Applicant, a native and citizen of El Salvador, 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 she will become inadmissible upon departing from the United States for having previously been 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 Harlingen, Texas Field Office denied the application, concluding that there would be no purpose in granting conditional permission to reapply because the Applicant would still be inadmissible under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend her immigration hearing.

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 remand this matter for the entry of a new decision consistent with the reasoning below.

I. LAW

Section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), states in relevant part that any noncitizen who has been previously ordered removed as an arriving alien, and who seeks admission again within five years of their subsequent departure or removal from the United States, is inadmissible. Under section 212(a)(9)(A)(iii) of the Act, an exception exists for this inadmissibility if USCIS has granted the noncitizen permission to reapply for admission, in the exercise of discretion.

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).

Section 212(a)(6)(B) of the Act states that any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the noncitizen's inadmissibility or deportability is inadmissible for five years following that noncitizen's subsequent departure or removal from the United States.

II. ANALYSIS

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

The record indicates that the Applicant entered the United States without inspection on or around February 28, 1998. On [redacted] 1998, an immigration judge ordered the Applicant removed *in absentia* for failing to attend her immigration proceeding. The Applicant remains in the United States and has held Temporary Protected Status since 2001.

In 2020, the Applicant's husband filed a Form I-130, Petition for Alien Relative, on her behalf, which was approved. On November 15, 2020, the Applicant filed a Form I-212 to seek conditional permission to reapply for admission to the United States under the regulation at 8 C.F.R. § 212(j), because once she departs the United States, she will become inadmissible due to her 1998 deportation order. The approval of the application under these circumstances is conditioned on the Applicant's departure from the United States and would have no effect if she failed to depart.

On February 8, 2021, the Director denied the application, finding that the Applicant had not provided a reasonable cause for her failure to attend her immigration hearing in 1998, and therefore she would be inadmissible for five years upon departure from the United States under section 212(a)(6)(B) of the Act. Since no waiver exists for this inadmissibility, the Director found that there would be no purpose in adjudicating the Form I-212 application and denied it as a matter of discretion.

We find that the Director erred in determining that upon departure from the United States, the Applicant would be statutorily inadmissible to the United States pursuant to section 212(a)(6)(B) of the Act. In the underlying Form I-212 and on appeal, the Applicant states that she will not be inadmissible under section 212(a)(6)(B) of the Act upon departing from the United States, because she had a reasonable cause for failing to attend her immigration proceeding. 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]." [1] The Applicant asserts that since she was nine years old at the time, her attendance at her immigration proceedings was not reasonably within her control. We agree.

[1] 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).

Since the record does not establish that the Applicant will be inadmissible under section 212(a)(6)(B) of the Act when she departs the United States,[2] we find it appropriate to remand the matter for the Director to reevaluate the submitted evidence and consider whether the Applicant has established that she merits 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] We note that the Applicant will depart the United States and apply for an immigrant visa, and the U.S. Department of State will make a final determination of the Applicant's inadmissibility under section 212(a)(6)(B) and any other applicable section of the Act at that time.