U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20498508

Date: JUN 13, 2022

Appeal of Las Vegas, Nevada 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 Las Vegas, Nevada Field Office denied the application, concluding that the Applicant has not demonstrated that the favorable factors in his case outweigh the unfavorable factors. The matter is now before us on appeal.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *See 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, a native and citizen of Mexico, entered the United States without inspection in February 2004. In [redacted] 2011, he was arrested for driving under the influence and other driving violations in [redacted] Nevada, and subsequently was interviewed by immigrations officials. The Form I-862, Notice to Appear, was served, and the Applicant was placed in removal proceedings.[1] The Applicant did not attend his removal hearing and was ordered removed by an Immigration Judge in absentia on [redacted] 2011, but has remained in the United States. The Applicant is a beneficiary of an approved immigrant visa petition filed by his U.S. citizen spouse.

The Applicant seeks permission to apply for admission pursuant to 8 C.F.R. § 212.2(j) before leaving the United States as his departure will trigger inadmissibility under section 212(a)(9)(A)(ii) of the Act due to his prior removal order.[2] However, we note that the Applicant's departure will also trigger inadmissibility under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for which there is no waiver. Section 212(a)(6)(B) of the Act provides that any noncitizen "who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible." While there is no statutory definition of the term "reasonable

[1] The record indicates that the Applicant refused to sign the Form I-862.

[2] The approval of his 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.

cause" as it is used in this section, guiding USCIS policy provides that "it is something not within the reasonable control of the [applicant]."[3]

Here, the Applicant was not given an opportunity to demonstrate that he had reasonable cause in failing to attend the hearing. Therefore, we find it appropriate to remand the matter to the Director. If the Director finds that the Applicant had reasonable cause, then the Director should properly weigh the favorable and unfavorable factors presented in the case.

We further note that the Applicant submits new evidence on appeal and contests the Director's conclusions that: he entered the United States multiple times without admission or parole; he presented a fake Mexican passport; he was charged with driving under the influence; and he failed to demonstrate that he has an approved visa petition.[4] Because the Director has not had a chance to review the new evidence, it is appropriate to remand the matter so that the Director can make the initial determination about the significance and weight of the new evidence.

Upon remand, the Director may request any additional evidence considered pertinent to the new determination and any other issue to determine in the first instance if the Applicant 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.

[3] 8 USCIS Policy Manual I, retired Adjudicator's Field Manual Chapter 40.6, https://www.uscis.gov/policymanual.

[4] We note that in denying the case, the Director did not provide a detailed analysis of the evidence and consideration of the favorable and the unfavorable factors in the record. We further note that while the Director asserted that U.S. Citizenship and Immigration services has not received a visa petition on his behalf, in the same decision, the Director acknowledged that the Applicant's immigrant visa petition filed on his behalf by his U.S. citizen spouse was approved in November 2015.