U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20084837

DATE: MAR. 21, 2022

Appeal of Nebraska Service Center Decision

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

The Applicant, a native and citizen of the Dominican Republic, 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), for having been previously ordered removed.

The Director of the Nebraska Service Center denied the Form I-212, Application for Permission to Reapply for Admission (application for permission to reapply), concluding that the Applicant is inadmissible to the United States under multiple grounds which cannot be waived and indicating no purpose would be served in approving her application for permission to reapply.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This office reviews 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 dismiss the appeal.

I. LAW

Section 212(a)(2)(A) of the Act provides that any noncitizen who admits having committed acts which constitute the essential elements of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible. Individuals found inadmissible under section 212(a)(2)(A) of the Act for a controlled substance violation related to a single offense of simple possession of 30 grams or less of marijuana may seek a discretionary waiver of inadmissibility under section 212(h) of the Act.

Section 212(a)(2)(C)(i) of the Act renders inadmissible any foreign national who the consular officer or the Secretary of Homeland Security knows or has reason to believe is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802).

Section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), provides that any "arriving alien . . . who has been ordered removed under section 235(b)(1) [of the Act, 8 U.S.C. § 1225(b)(1),] or at the end of proceedings under section 240 [of the Act, 8 U.S.C. § 1229a,] initiated upon the arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any alien, other than an arriving alien described in section 212(a)(9)(A)(i), 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 an alien convicted of an aggravated felony) is inadmissible."

Foreign nationals 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) 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 foreign national's reapplying for admission."

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. *See Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). However, when an applicant will remain mandatorily inadmissible or excludable from the United States, no purpose would be served in granting the application for permission to reapply. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964); *Matter of J-F-D-*, 10 I&N Dec. 694 (Reg'l Comm'r 1963).

II. ANALYSIS

The record reflects that the Applicant was admitted to the United States as a lawful permanent resident (LPR) in August 1984. Upon seeking admission as a returning LPR in [redacted] 2001, she was paroled into the United States for criminal prosecution after she was found to be in possession of heroin. In [redacted] 2002, the Applicant was convicted under 21 U.S.C. §952(a) and 21 U.S.C. §960(b)(2) for importing heroin, she was ordered removed from the United States on [redacted] 2004, and she was subsequently removed on [redacted] 2004. In April 2019, the Applicant applied for an immigrant visa to return to the United States. The U.S. Department of State (DOS) found the Applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for committing a crime involving moral turpitude; section 212(a)(2)(A)(i)(II) of the Act for violating a law related to a controlled substance; section 212(a)(2)(C)(i) of the Act for trafficking a controlled substance; and section 212(a)(9)(A) of the Act for having been previously ordered removed and being convicted of an aggravated felony. Because the Applicant is residing abroad and applying for an immigrant visa, DOS makes the final determination concerning admissibility.

The Director referenced these inadmissibilities and found that the Applicant is not eligible for a waiver of her controlled substance violation under section 212(h) of the Act as her offense was not for simple possession of 30 grams or less of marijuana, rather it was for importing heroin. The Director also

noted that there is no waiver available for the Applicant's inadmissibility under section 212(a)(2)(C)(i) of the Act for trafficking a controlled substance. The Applicant does not contest these findings on appeal. We agree with the Director's findings that the Applicant is not eligible for a waiver of these two inadmissibilities.[1]

On appeal, the Applicant addresses her favorable discretionary factors in support of her application for permission to reapply, mentioning that she is the mother of four U.S. citizen children, she has been separated from them for many years, and she is rehabilitated. However, we will not weigh her favorable factors against her unfavorable factors. Because the Applicant remains mandatorily inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act for violating a law related to a controlled substance and section 212(a)(2)(C)(i) of the Act for trafficking a controlled substance, we will dismiss the instant appeal of the denial of the application for permission to reapply as a matter of discretion, as its approval would serve no purpose. *Matter of Martinez-Torres, supra*; *Matter of J-F-D, supra*. The application will therefore remain denied.

ORDER: The appeal is dismissed.

[1] Furthermore, regarding the Applicant's crime involving moral turpitude, although a discretionary waiver may be available in some instances, because she was convicted of an aggravated felony after being admitted as a LPR, she is ineligible for a waiver under section 212(h) of the Act.