U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15841092

Date: MAY 2, 2022

Appeal of Queens, New York 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 she will be inadmissible upon departing from the United States for having been previously ordered removed. *See* section 212(a)(9)(A)(i) of the Act. 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 Queens, New York Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding the Applicant did not establish that a favorable exercise of discretion was warranted. On appeal, the Applicant contends that the Director erred. 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.

The Applicant is currently in the United States and seeks permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before departing the United States.[1] Because she has an outstanding order of removal, she will be inadmissible under section 212(a)(9)(A)(ii) of the Act once she departs.[2] 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). In addition, she may file a provisional waiver application, a separate application for relief, to waive her inadmissibility for unlawful presence and reenter the United States. *See* section 212(a)(9)(B)(v) of the Act. Pursuant to the regulation at 8 C.F.R. § 212.7(e)(4)(iv), an individual inadmissible under section 212(a)(9)(A) of the Act for having been ordered removed must obtain permission to reapply for admission before applying for a provisional waiver. The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

[1] Approval of an application is conditioned upon departure from the United States and would have no effect if the Applicant does not depart.

[2] The record indicates that the Applicant entered the United States in 1996 without being inspected, admitted, or paroled. She was subsequently granted voluntary departure on [redacted] 1997, with an alternate order of deportation on [redacted] 1997. The Applicant's motion to reopen her removal proceedings was denied on August 27, 2018. She did not depart and continues to reside in the United States.

Our records indicate that the Applicant's immigrant visa registration was terminated pursuant to section 203(g) of the Act.[3] As the record does not establish that the Applicant has an active visa processing case with the U.S. Department of State that would facilitate the issuance of an immigrant visa for admission to the United States, no purpose would be served in adjudicating her application for permission to reapply for admission. The appeal of the denial of the application for permission to reapply will therefore be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.

[3] Section 203(g) of the Act states, in pertinent part, that:

> The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond the alien's control.

An approved petition or self-petition is automatically revoked as of the date of approval if registration is terminated under section 203(g) of the Act. *See* 8 C.F.R. § 205.1(a)(1).