U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 20267700

Date: MAY 04, 2022

Appeal of Los Angeles, California Field Office Decision

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

The Applicant will be inadmissible upon her departure from the United States for having been previously ordered deported 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).

Section 212(a)(9)(A)(ii) of the Act provides that any alien, other than an arriving alien described in section 212(a)(9)(A)(i), who "has been ordered removed under section 240 or any other provision of law… and who seeks admission within 10 years of the date of such departure or removal . . . 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.

The Applicant currently resides in the United States and is seeking conditional approval of the application under the regulation at 8 C.F.R. § 212.2(j) before she departs, as she will be inadmissible upon her departure due to her 1997 deportation order. The approval of the application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if she fails to depart.

The Director of the Los Angeles, California Field Office denied the application because no purpose would be served in its review as the Applicant would also be inadmissible upon her departure from the United States under section 212(a)(6)(B) of the Act, for failing to attend removal proceedings, and there is no waiver for this ground of inadmissibility.

On appeal, the Applicant asserts that the Director incorrectly found that she is inadmissible under section 212(a)(6)(B) of the Act. The Applicant also contends that the positive factors in her case outweigh the negative.

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). 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, as explained below, we will remand the matter to the Director for the entry of a new decision.

Section 212(a)(6)(B) of the Act renders inadmissible any foreign national who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the foreign national's inadmissibility or deportability and who seeks admission to the United States within five years of such foreign national's subsequent departure or removal.

A foreign national who without reasonable cause failed to attend, or to remain in attendance at, a hearing *initiated* on or after April 1, 1997, under section 240 of the Act to determine inadmissibility or deportability shall be ineligible for a visa under INA 212(a)(6)(B) for five years following the foreign national's subsequent departure or removal from the United States. *See* 22 CFR § 40.62, (Emphasis added).

We find that the Director erred in concluding that upon departure from the United States, the Applicant would be inadmissible to the United States pursuant to section 212(a)(6)(B) of the Act. In the instant case, although the Applicant was ordered removed on [redacted] 1997,[1] the hearing was initiated in 1996. Section 212(a)(6)(B) of the Act does not apply to an individual placed in deportation proceedings before April 1, 1997.

Considering the Applicant is not subject to inadmissibility pursuant to section 212(a)(6)(B) of the Act, we find it appropriate to remand the matter for the Director to reevaluate the submitted evidence, weighing positive and negative factors, and considering 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.

[1] The Director appears to incorrectly state that the Applicant's removal was order on [redacted] 1997.