U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18743403

Date: MAY 4, 2022

Appeal of Los Angeles, California 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). The Director of the Los Angeles, California Field Office denied the application, concluding that: 1) the Applicant was not eligible to apply for permission to reapply for admission, and 2) she was inadmissible under section 212(a)(6)(B) of the Act for failure to appear at her removal proceedings. 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 dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any noncitizen, 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."

Noncitizens 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) of the Act if, prior to the date of the reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

Section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), 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." There is no waiver for this inadmissibility.

II. ANALYSIS

The record indicates that the Applicant, a native and citizen of El Salvador, will become inadmissible upon departing the United States pursuant to section 212(a)(9)(A)(ii) of the Act for having been previously ordered removed. The issue on appeal is whether the Applicant is eligible to file the Form I-212 and whether she had reasonable cause for not attending her removal proceeding.

The record shows that the Applicant entered the United States without inspection on or about [redacted] 2005. She was subsequently apprehended by immigration officials and served a Notice to Appear. The Applicant did not attend her removal hearing and was ordered removed by an Immigration Judge in absentia on [redacted] 2005. The Applicant has remained in the United States, and upon her departure, she will become inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act for having been previously ordered removed. The Applicant states that she is seeking conditional approval of her application under the regulation at 8 C.F.R. § 212.2(j) before departing the United States to apply for an immigrant visa. The approval of the Form I-212 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 denied the application, concluding that the Applicant was not eligible to apply for permission to reapply for admission because she did not have any pending immigrant visa application with the U.S. Department of State and also, because she was not eligible to adjust her status due to her unexecuted removal order. The Director further concluded she was inadmissible under section 212(a)(6)(B) of the Act for failure to appear at her removal proceedings. The matter is now before us on appeal.

On appeal, the Applicant claims that she is eligible to apply pursuant to the regulation 8 C.F.R. § 212.2(j), because her U.S. citizen spouse has filed a Form I-130, Petition for Alien Relative, on her behalf and it is currently pending with U.S. Citizenship and Immigration Services (USCIS). She references the Form I-212 instructions and asserts that they do not require a "Consular Case Number" and do not indicate the need to submit evidence of a pending immigrant or nonimmigrant visa application with the U.S. Department of State.

The regulation at 8 C.F.R. § 212.2(j) pertains to conditional approval of a Form I-212, and provides in pertinent part, that a noncitizen whose departure will execute an order of deportation may receive conditional approval depending upon their satisfactory departure. Here, the Applicant expresses her intention to complete her immigration process through consular processing. Upon her departure, the Applicant will become inadmissible under section 212(a)(9)(A) of the Act and therefore, she may apply for conditional approval of her Form I-212 application under the regulation at 8 C.F.R. § 212.2(j) before departing the United States. Again, the approval of the Form I-212 under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if she fails to depart.

On appeal, the Applicant also asserts that she had reasonable cause for not attending her removal hearing. As noted above, the section 212(a)(6)(B) of the Act provides that noncitizens are inadmissible if they fail to attend a removal proceeding "without reasonable cause." There is no statutory definition of the term "reasonable cause" as it is used in this section, but guiding USCIS policy provides that "it

is something not within the reasonable control of the [applicant]."[1] In a statement submitted in support of the Form I-212 application,[2] the Applicant seeks forgiveness for not appearing at her immigration hearings. She states that at the time of her apprehension, even though she intended to live in [redacted] California, she provided a Texas address, where she never lived, to receive correspondence related to her immigration issues. She stated that she found out "years later" when she requested information pursuant to Freedom of Information Act that she had been scheduled to appear at an immigration court hearing. However, the Form I-213, Record of Deportable /Inadmissible Alien, created on the day of the Applicant's apprehension reflects a [redacted] California address for the Applicant and the narrative section of the Form I-831, Continuation Page, of the Form I-213, indicates that the Applicant provided her cousin's phone number and the [redacted] California address where she had planned to reside. Furthermore, pursuant to section 265 of the Act, 8 U.S.C. § 1305, the Applicant was required to notify the Department of Homeland Security of her change in address within 10 days.[3] Based on this evidence, the Applicant has not shown that her failure to attend the hearing was not within her reasonable control.

An application for permission to reapply for admission is denied, in the exercise of discretion, to a noncitizen who is mandatorily inadmissible to the United States under another section of the Act. Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg'l Comm'r 1964). Because the Applicant will depart the United States and apply for an immigrant visa, the U.S. Department of State will make the final determination concerning her eligibility for a visa, including whether the Applicant is inadmissible under section 212(a)(6)(B) or under any other ground. Evidence that the Applicant's departure will trigger inadmissibility under a separate ground for which no waiver is available, however, is relevant to determining whether a Form I-212 should be granted as a matter of discretion, as no purpose would be served in granting the application under these circumstances. See id.

III. CONCLUSION

Based upon the evidence provided, while we conclude that the Applicant is not precluded from applying for conditional Form I-212 under section 212(a)(9)(A)(iii) of the Act, we note that the Applicant will become inadmissible upon her departure for a period of five years for failure to appear at her removal hearing. Under these circumstances, no purpose would be served by determining whether the Applicant merits approval of her application as a matter of discretion. The application will therefore remain denied.

ORDER: The appeal is dismissed.

[1] 8 USCIS Policy Manual I, retired Adjudicator's Field Manual Chapter 40.6, https://www.uscis.gov/policymanual.
[2] The Applicant resubmits the same statement on appeal.
[3] The Applicant was also required to notify the Immigration Court of the change of address within five days under the regulation at 8 C.F.R. 1003.15(d)(2).