U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19385170

Date: MAY 05, 2022

Appeal of New York, New York Field Office Decision

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

The Applicant was previously ordered removed from the United States 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 New York, New York Field Office denied the Form 1-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) as a matter of discretion, concluding that the favorable factors did not outweigh the unfavorable factors in the case. The Director further determined that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for procuring a nonimmigrant visa by willful misrepresentation of a material fact.

In these proceedings, it is the Applicant's burden 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, 375-76 (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)(9)(A)(ii) of the Act 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 a noncitizen 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) 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 noncitizen'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). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior

deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973).

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).

The Applicant was ordered removed from the United States by an Immigration Judge on [redacted] 2011 and was removed to Senegal on [redacted] 2011. The Applicant does not contest that he is inadmissible under section 212(a)(9)(A)(ii) of the Act for having been ordered removed.

With the Form I-212, the Applicant concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status, and a Form I-601, Application for Waiver of Grounds of Inadmissibility, seeking a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, for having more than one year of unlawful presence in the United States. The Director denied the Form I-485 based on a conclusion that the application falls within the jurisdiction of the Executive Office for Immigration Review (EOIR) and was not properly before USCIS. Based on that denial, the Director denied the Form I-601 without reaching the merits of the waiver application, and the Applicant appealed that decision. In a separate decision, we remanded the Form I-601 instructing the Director to review the Applicant's arguments and supporting evidence regarding the jurisdiction over his adjustment of status and waiver applications and to issue a new decision on the Form I-601.

In the brief submitted in support of the instant appeal, the Applicant asserts that the Director's conclusion that he willfully misrepresented material facts to procure a nonimmigrant visa is not supported by the record. Specifically, the Applicant emphasizes that the record contains a copy of his 2012 nonimmigrant visa application in which he disclosed that: he had been previously ordered removed; he had worked without authorization; and he had unlawfully remained in the United States without status for a period significantly longer than one year. Finally, the Applicant maintains that any determination that he is inadmissible for fraud or willful misrepresentation of material facts in procuring immigration benefits under section 212(a)(6)(C)(i) of the Act should be made in the course of adjudicating his Form I-601 so that he may be granted a waiver of this ground of inadmissibility, if found eligible. As noted, the Form I-601 has been remanded to the Director for further review and issuance of a new decision.

In addition, the Applicant asserts that the Director improperly applied the "extreme hardship" standard to the Form I-212 adjudication and erred by failing to fully consider the submitted evidence and weigh all favorable and unfavorable factors present in his case. We agree that the Director's decision contains several references to "extreme hardship," an eligibility requirement that applies only to the Form I-601 adjudication. As a result, the Director appears to have given less weight to favorable factors in this case that he did not deem to amount to "extreme" hardships. Further, as noted, the Director made a separate determination that the Applicant is inadmissible under section

212(a)(6)(C)(i) of the Act and appears to have given significant weight to this determination as a negative factor.

Considering the arguments and evidence submitted on appeal regarding the favorable discretionary factors in the Applicant's case, his contention that the Director inappropriately concluded that he is inadmissible under section 212(a)(6)(C)(i) of the Act, and the issuance of our decision remanding the Form I-601, we find it appropriate to remand the matter for the Director 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.