



**U.S. Citizenship
and Immigration
Services**

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

In Re: 19271516

Date: MAY 5, 2022

Appeal of Nebraska Service Center Decision

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

The Applicant, who is currently residing in El Salvador, 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 Nebraska Service Center denied the Form I-212, concluding that no purpose would be served in approving the application because the Applicant did not establish that he is an applicant for an immigrant visa with the U.S. Department of State who has been interviewed by a consular officer and found inadmissible under a section of the Act that requires the filing of a Form I-212. On appeal, the Applicant indicates that he was interviewed at the U.S. Embassy in El Salvador and found inadmissible because he departed the United States while his removal order was pending.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for the entry of a new decision.

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, other than an "arriving alien," who has been ordered deported or removed under section 240 of the Act, 8 U.S.C. § 1229a, or any other provision of law, or who 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, 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 continuous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

The record indicates that the Applicant is the beneficiary of an approved immigrant petition filed by his U.S. citizen spouse that was forwarded for processing at the National Visa Center. He also presented documentation indicating that he has applied for an immigrant visa with the U.S. Department of State. In April 2021, the Applicant was interviewed at the U.S. Embassy in El Salvador and found inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act.

The Applicant asserts on appeal, and we agree, that he has overcome the Director's stated basis for denial. Accordingly, we will remand the matter for the Director to weigh the positive and negative factors in the Applicant's case and to determine whether he merits permission to reapply for admission as 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.