U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27165686

Date: AUG. 2, 2023

Appeal of Chicago, Illinois Field Office Decision

Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal

The Applicant, a national of Ukraine who has requested an immigrant visa abroad, seeks advance 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 he will become inadmissible upon departing from the United States for having been previously ordered removed.

The record reflects that in November 2002 an Immigration Judge granted the Applicant voluntary departure from the United States until January 13, 2003, with alternate order of removal to Ukraine if he failed to depart by that date. The Applicant did not depart, and has remained in the United States.[1]

Section 212(a)(9)(A)(ii) of the Act provides in relevant part that a noncitizen who has been ordered removed, or who departed the United States while an order of removal was outstanding, is inadmissible for 10 years after the date of such departure or removal. 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. Section 212(a)(9)(A)(iii) of the Act.

The Director of the Chicago, Illinois Field Office denied the Form I-212 as a matter of discretion, concluding that because the Applicant had not yet departed from the United States, he was not yet inadmissible under section 212(a)(9)(A)(ii) of the Act and ineligible for the benefit sought. The Director acknowledged the claims of hardship to the Applicant's U.S. citizen spouse and children, but stated generally that less weight is given to equities acquired after the removal order had been entered.[2] The matter is now before us on appeal.

On appeal, the Applicant reiterates that he is seeking conditional approval of the Form I-212 before he departs from the United States. He also points out that the birth of his first child and his marriage occurred before he was ordered removed, and the Director erred by not giving these positive factors full weight. The Applicant references previously submitted evidence of positive equities in his case, including hardship affidavits from his spouse; school and medical records of his child; documents

[1] He appealed the Immigration Judge's decision to the Board of Immigration Appeals (the Board), but the Board dismissed his appeal in 2004 and denied a subsequent motion to reopen in 2006.

[2] The Director did not address any other factors in the case.

concerning home ownership and payment of taxes; and employment records. He states that he believes a favorable exercise of discretion is warranted in his case based on the totality of the positive factors; his long-time residence in the United States, strong family ties in the country, hardship to his spouse and children, lack of criminal history, good moral character, and compliance with all requests by the U.S. Immigration and Customs Enforcement since the final removal order was entered.

The Applicant bears the burden of proof to demonstrate eligibility for the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions 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 remand the matter to the Director for the issuance of a new decision.

Here, the Applicant is seeking advance permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before he travels abroad to obtain an immigrant visa from the U.S. Department of State, as he will become inadmissible under section 212(a)(9)(A)(ii) of the Act once he departs. The approval of the Applicant's Form I-212 under these circumstances is conditioned upon his departure from the United States and would have no effect if he does not depart. The Director therefore erred in concluding that the Applicant was ineligible to seek for permission to reapply for admission before departing from the United States.

Because the Director did not consider whether the Applicant merits conditional approval of his Form I-212 as a matter of discretion, we will remand the matter to the Director to evaluate all positive and negative factors in the case and to issue a new decision, accordingly.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.