



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

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

In Re: 24251005

Date: FEB. 13, 2023

Appeal of Newark, New Jersey Field Office

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 removed and seeks permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The Director of the Newark, New Jersey Field Office, denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), as a matter of regulation and a matter of discretion. Specifically, the Director found that the Applicant, upon her departure, would become inadmissible under section 212(a)(6)(B) of the Act for failing to appear at her removal proceeding, a ground of inadmissibility for which there is no waiver available. The Director also determined that a favorable exercise of discretion was not warranted because the negative factors outweighed the positive factors in the case. On appeal, the Applicant contends that she has established eligibility for the benefit sought.

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). The Administrative Appeals Office (AAO) 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, we will dismiss the appeal.

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, other than an "arriving alien," who has been ordered 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 contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

Section 212(a)(6)(B) of the Act provides that any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the noncitizen's inadmissibility or deportability, and who seeks admission to the United States within five years of the noncitizen's subsequent departure or removal, is inadmissible. There is no waiver for this inadmissibility.

The record indicates that the Applicant 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 Applicant appears to be 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 he fails to depart. The issue raised on appeal is whether the Applicant should be granted conditional approval of the Form I-212 in the exercise of discretion.

The Applicant entered the United States without inspection in 2005. She was subsequently apprehended by immigration officials and served a Notice to Appear; the record indicates it was served in person and oral notice was provided "in the Portuguese language" of the "consequences of failure to appear" as provided in the Act. The Applicant did not attend her removal hearing and was ordered removed by an immigration judge *in absentia* on July 25, 2006. The Applicant has remained in the United States to date, and as detailed by the Director, upon her departure she will become inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act for having been previously ordered removed.

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.* Consequently, we find no error in the Director's denial of the application as a matter of regulation and a matter of discretion, and we need not address the evidence in the record relating to the positive and negative factors in the case or determine whether a favorable exercise of discretion would be warranted. The application will therefore remain denied.

ORDER: The appeal is dismissed.