



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

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

In Re: 23888345

Date: FEB. 13, 2023

Motion of Administrative Appeals 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), because he will be inadmissible upon departing from the United States for having been previously ordered removed. *See* section 212(a)(9)(A)(ii) of the Act.

The Director of the New York, New York Field Office denied the application, concluding that the Applicant did not establish that a favorable exercise of discretion was warranted in his case. We dismissed the Applicant's subsequent appeal on the same grounds and the matter is now before us on a motion to reconsider. On motion, counsel for the Applicant submits a brief and maintains that the Applicant has established eligibility for the benefit sought. Upon review, we will dismiss the motion.

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies the above requirements and demonstrates eligibility for the requested immigration benefit.

The issue on motion is whether the Applicant has established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record at the time of the decision. We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Applicant's claims on motion.

On appeal, we determined that the totality of the evidence did not establish that the favorable factors outweighed the unfavorable ones in the Applicant's case. We concurred with the Director that the record established hardships to the Applicant and his family. The record also established the country conditions in the Applicant's home country of China, which showed it was experiencing issues with environmental pollution, and that some returning deportees were treated in a discriminatory fashion upon return. We also determined that the Applicant appeared to be a good person who was dedicated to his family's well-being, and he had financial assets and a positive work history in the United States. However, we agreed with the Director that the Applicant's immigration violations were a serious

negative factor which was not overcome by the favorable factors and thus, we dismissed the appeal accordingly.

On motion, the Applicant has not sufficiently addressed or overcome the deficiencies discussed in our prior decision. The Applicant does not address on motion the apparent inconsistencies and lack of candor during his asylum and immigration court proceedings regarding whether or not he was sterilized, as detailed in our decision to dismiss the appeal. Nor has the Applicant established on motion that he is remorseful for the serious immigration violations established in the record. As for the hardships referenced on motion, we again recognize, as we did when we dismissed the appeal, the Applicant's family ties and the hardships to him and his family, most notably his spouse, if he were unable to remain in the United States. We also acknowledge the Applicant's apparent lack of a criminal history and letters submitted in support of his request for permission to reapply for admission. Nevertheless, we find on motion that the positive factors in the record do not overcome the negative factors in the Applicant's case, including the Applicant's entry into the United States without being admitted in 1994, his periods of unlawful presence and employment in the United States, his failure to depart the United States pursuant to a voluntary departure order, his order of removal, his failure to depart pursuant to the removal order, and the apparent inconsistencies and lack of candor during his asylum and immigration court proceedings as detailed above.

The burden of proving eligibility for entry or admission to the United States rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not established that our decision was based on an incorrect application of law or policy. Nor has the Applicant established that our decision was incorrect based on the evidence in the record at the time of our decision. The application will remain denied.

ORDER: The motion to reconsider is dismissed.