U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25725664

Date: JUNE 12, 2023

Appeal of Charlotte, North Carolina Field Office Decision

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

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), for having been previously ordered removed.

The Director of the Charlotte, North Carolina Field Office denied the application in the exercise of discretion. The Director determined that the Applicant would be inadmissible upon her departure from the United States under section 212(a)(6)(B) of the Act, for failure to attend removal proceedings, and there is no waiver for this ground of inadmissibility.[1] On appeal, the Applicant asserts that the Director incorrectly found that she is inadmissible under section 212(a)(6)(B) of the Act.

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.

The record establishes that the Applicant was ordered removed *in absentia* in [redacted] 2013. The Applicant subsequently filed a motion to reopen removal proceedings with the Immigration Court and in June 2017, the Immigration Judge granted the Applicant's motion to reopen the *in absentia* removal order. If a motion to reopen is granted, the original removal order is vacated. *Nken v. Holder,* 556 U.S. 418, 429 n.1 (2009); *see also* 8 C.F.R. § 1003.23(b)(4)(ii). The Applicant is thus not subject to section 212(a)(6)(B) of the Act inadmissibility for failing to attend her removal proceedings. Nor is she subject to inadmissibility under section 212(a)(9)(A)(ii) of the Act, as the record does not establish that the Applicant is subject to a final order of removal as of the date of this decision.[2] The Applicant

[1] *See* 22 CFR § 40.62, Failure to attend removal proceedings. "An alien who without reasonable cause failed to attend, or to remain in attendance at, a hearing initiated on or after April 1, 1997, under INA 240 to determine inadmissibility or deportability shall be ineligible for a visa under INA 212(a)(6)(B) for five years following the alien's subsequent departure or removal from the United States."

[2] Although we acknowledge that the Applicant was ordered removed in [redacted] 2019, the record indicates that she filed a motion to reopen, which was subsequently granted by the Immigration Judge in March 2022 because "good cause has been established by the motion," and her removal proceedings remain pending. The Applicant's 2019 removal order has thus been vacated.

does not require permission to reapply for admission at this time. Therefore, we will dismiss the appeal as further pursuit of the matter at hand is moot.

ORDER: The appeal is dismissed.