



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

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

In Re: 27490227

Date: SEP. 15, 2023

Appeal of Nebraska Service Center 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 ordered removed. *See* section 212(a)(9)(A)(ii) of the Act. The Director of the Nebraska Service Center denied the application, concluding that the record did not establish that the Applicant did not warrant a favorable exercise of discretion because he would remain inadmissible after the denial of his separate Form I-601. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility 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 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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony), 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.

The Applicant contests the Director’s finding that he is inadmissible for 20 years based on multiple removals from the United States, arguing he has only been removed once and subsequently was only inadmissible for 10 years following that removal. We concur. The Applicant was removed once from the United States in 2006. Records indicate that prior to that removal, in 1992, the Applicant was granted – and complied with – an order of administrative voluntary return to Mexico. During the Applicant’s removal proceedings in 2005, the Immigration Judge found the Applicant had already been granted voluntary return once, further supporting this finding that the Applicant was allowed to

voluntarily return to Mexico rather than ordered removed in 1992. Finally, the Applicant was issued a notice to appear (NTA), instating those removal proceedings. The NTA charged the Applicant with inadmissibility under section 212 of the Act, rather than reinstating a prior removal order. As such, the record does not support a finding that the Applicant has been removed more than the one time that occurred in 2006. Therefore, he would be inadmissible under section 212(a)(9)(A)(ii) of the Act; however, only if he were applying for admission within 10 years of his removal. That is not the case – his removal occurred in 2006, and he has remained in Mexico. He sought permission to reapply for admission in 2016, and he now seeks review of the Director’s decision from 2022, both of which fall outside the 10-year period following removal. Thus, the Applicant was not inadmissible under section 212(a)(9)(A)(ii) of the Act at the time he filed the Form I-212, nor was he inadmissible under section 212(a)(9)(A)(ii) of the Act when the Director’s decision was issued. Similarly, he is not now inadmissible under section 212(a)(9)(A)(ii) of the Act, and no permission is needed to reapply for admission. As such, his Form I-212 remains denied, and we dismiss his appeal as moot.

ORDER: The appeal is dismissed.