U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9458596

Date: FEB. 24, 2021

Appeal of Providence, Rhode Island Field Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant seeks retroactive 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 Providence Field Office in Johnston, Rhode Island denied the application as a matter of discretion, concluding that the Applicant was inadmissible under section 212(a)(6)(B) of the Act for failing to attend removal proceedings, for which there is no available waiver, so no purpose would be served in adjudicating his Form I-212 application.

On appeal, the Applicant argues that a Form I-212 is not needed because he has not departed the United States since he left pursuant advance parole, that he is otherwise not seeking admission within five years of leaving the country, and that he alternatively had reasonable cause for failing to appear at his master calendar hearing so is not inadmissible under section 212(a)(6)(B) of the Act.

The Applicant bears the burden of establishing eligibility for the requested immigration benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will remand the matter to the Director for further proceedings consistent with our opinion below.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a foreign national, other than an "arriving alien," who has been ordered removed under section 240 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. Foreign nationals 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 continuous territory, the Secretary of Homeland Security has consented to the foreign national's reapplying for admission.

Section 212(a)(6)(B) of the Act provides that any foreign national who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the foreign national's inadmissibility or

deportability, and who seeks admission to the United States within five years of the foreign national's subsequent departure or removal, is inadmissible. There is no waiver for this inadmissibility.

II. ANALYSIS

In denying the application, the Director indicated that the record showed the Applicant entered the United States without inspection in 2000, was served with an I-862, Notice to Appear at removal proceedings, and was ordered removed *in absentia* by an Immigration Judge in [redacted] 2002. The Director concluded that the Applicant's Form I-821, Application for Temporary Protected Status was approved in [redacted] 2002, and that in 2015 the Applicant departed the United States with advance parole, thus executed his removal order and making him inadmissible under section 212(a)(9)(A)(ii) of the Act and under section 212(a)(6)(B) of the Act because he had not shown reasonable cause for failing to attend his removal hearing and for which he had not remained outside of the United States for five years since his departure.

The record indicates that the Applicant departed the United States with an approved Form I-512L, Authorization for Parole of an Alien into the United States, in 2013 and in 2015. The Applicant obtained an advance parole document pursuant to the TPS provisions of section 244(f)(3) of the Act, 8 U.S.C. § 1254a(f)(3), and corresponding regulations at 8 C.F.R. § 244.15(a).

A TPS beneficiary who obtains authorization to travel abroad temporarily, as evidenced by an advance parole document issued under 8 CFR 244.15(a), and who returns to the United States in accordance with such authorization resumes the same immigration status and circumstances they had at the time of departure, and such travel does not result in the execution of any outstanding removal order. *See* 7 *USCIS Policy Manual* A.3(D), https://www.uscis.gov/policy-manual (citing section 304(c)(1)(A)(ii) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Pub. L. 102-232, 105 Stat. 1733, 1749 (December 12, 1991), as amended). Accordingly, when the Applicant reentered the United States he was returned to the same immigration status he had at the time of his departure—that of a TPS recipient who was present in the United States without inspection and admission or parole and who had an outstanding, unexecuted order of removal.

Because the Applicant's TPS-based travel authorized under 8 CFR 244.15(a) of the Act did not execute his removal order, he is not inadmissible under section 212(a)(9)(A)(ii) of the Act. The Applicant therefore does not require permission to reapply for admission, and the Form I-212 is moot.

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