U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29648018

Date: JAN. 23, 2024

Appeal of New York, New York Field Office Decision

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

The Applicant, who intends to request an immigrant visa abroad, seeks advance 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 she will become inadmissible upon departing from the United States for having been previously ordered removed. Permission to reapply for admission is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services may grant in the exercise of discretion.

The Director of the New York, New York Field Office denied the application, concluding that no purpose would be served in granting conditional approval for permission to reapply for admission as the Applicant, upon her departure, would also become inadmissible under section 212(a)(6)(B) of the Act for failure to appear at her removal proceedings. 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.

I. LAW

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.

II. ANALYSIS

The Applicant is currently in the United States and seeks permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before departing the United States.[1] The record indicates that the Applicant will become inadmissible upon departing the United States under section 212(a)(9)(A)(ii) of the Act.

The record reflects that the Applicant entered the United States without admission in November 2000. She was personally served with a Notice to Appear, including oral notice in the Spanish language, and she was informed of the consequences if she failed to appear for her removal hearing at a date to be determined. Upon her release under bond from immigration custody in Arizona, the Applicant reported her address as [redacted], New York, according to the Form I-830, Notice to EOIR: Alien Address (Form I-830). In January 2001, an attorney submitted a Motion for Change of Venue (Motion) and provided the [redacted], New York address for the Applicant. The Motion was granted; the removal hearing was scheduled for [redacted], 2001; and the Applicant was ordered removed *in absentia* by an Immigration Judge in New York.

The Director denied the Form I-212, concluding the Applicant failed to attend removal proceedings without reasonable cause. Therefore, no purpose would be served in granting conditional approval for permission to reapply for admission as she would become inadmissible under section 212(a)(6)(B) of the Act upon her departure. On appeal, the Applicant provides an updated affidavit and asserts that she had reasonable cause for failing to attend her removal hearing. She contends that she did not know the attorney M-K-[2], who filed the Motion; she does not know how he obtained the [redacted], [redacted], New York address listed on the Motion; and it is her understanding that her former spouse J-A-Q- only hired the attorney to pay the bond for her release from immigration custody. The Applicant indicates that J-A-Q- provided the [redacted] address to the attorney; there must have been a language problem with her now deceased former spouse, who did not speak English; and she and her family members have never lived at that address.

Upon review, we find the record supports the Director's determination that the Applicant would become inadmissible under section 212(a)(6)(B) of the Act, for failing to attend removal proceedings without reasonable cause, and there is no waiver for this ground of inadmissibility. There is no statutory definition of the term "reasonable cause" as it is used in section 212(a)(6)(B) of the Act, but guiding USCIS policy provides that "it is something not within the reasonable control of the alien."[3]

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[1] The approval of her application is conditioned upon departure from the United States and will have no effect if the Applicant does not depart.

[2] We use initials to protect the privacy of individuals.

[3] Memorandum from Lori Scialabba, Associate Director for Refugee, Asylum & International Operations Directorate, et al., USCIS, HQ 70/21.1 AD07-18, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators. Revisions to the Adjudicator's Field Manual (AFM) to Include a New Chapter 40.6* (AFM Update AD07-18)(Mar. 3, 2009).

The Applicant was personally served with a Notice to Appear, including oral notice in the Spanish language, and she was informed of the consequences if she failed to appear for her removal hearing at a date to be determined. She provided the [redacted] address upon her release from immigration custody, as indicated on the Form I-830. Though the Applicant asserts on appeal that her former spouse J-A-Q- hired an attorney to pay the bond for her release from custody, the record indicates a different individual secured the bond and provided the [redacted] address on the Form I-352, Immigration Bond. Regarding the Applicant's assertion that her former spouse may have been responsible for providing [redacted] as an incorrect address on the Motion, the record does not contain any other references to her marriage to J-A-Q- or otherwise indicate that the Applicant was married to this individual. For example, the Applicant does not list any prior marriages on the Form I-212 and she notes in her initial affidavit submitted with the application that she married F-Q-T- in 2018 and it "is a first marriage."

An application for permission to reapply for admission is denied, in the exercise of discretion, to a foreign national 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). Approving the Form I-212 would serve no purpose as the Applicant would remain inadmissible under section 212(a)(6)(B) of the Act for a period of five years. As the Applicant will become inadmissible upon her departure under section 212(a)(6)(B) of the Act, and there is no waiver available for this ground of inadmissibility, her application for permission to reapply for admission will remain denied as a matter of discretion.

ORDER: The appeal is dismissed.