U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29690169

Date: JANUARY 25, 2024

Appeal of Miami, Florida Field Office Decision

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

The Applicant, a citizen of Venezuela residing outside of the United States, 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).

The Director of the Miami, Florida Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the Form I-212 could not be adjudicated because the Applicant is outside the United States and the record does not indicate that he is an applicant for an immigrant visa who has been interviewed and found inadmissible by a consular officer as required.

Here, the record reflects that in 2019, the Applicant attempted to enter the United States with a nonimmigrant B1/B2 visa and was referred to secondary inspection. Following secondary inspection, U.S. Customs and Border Protection (CBP) cancelled the Applicant's nonimmigrant visa and he was expeditiously removed from the United States as an intending immigrant without a valid immigrant entry document. In 2021, he applied for a B1/B2 nonimmigrant visa and the U.S. Consulate in Madrid, Spain denied his application, determining that the Applicant was inadmissible on account of his prior removal from the United States.

On appeal, the Applicant contends CBP based its removal order on the unsupported allegation that he was an intending immigrant. He further contends that in denying his Form I-212, the Director failed to rectify the erroneous actions taken by CBP.

We first note here that consent to reapply for admission does not, alone, provide an applicant with immigrant or nonimmigrant status; they must still be eligible and approved for an immigrant visa or adjustment of status. If an applicant is residing abroad, U.S. Citizenship and Immigration Services (USCIS) cannot adjudicate the Form I-212 before consular processing as the U.S. Department of State is responsible for making the final determination concerning eligibility for a visa. In the present case, because the Applicant is seeking a nonimmigrant visa and not an immigrant visa, he is required to submit the Form I-212 to the U.S. Consulate with jurisdiction over his nonimmigrant visa application or place of residence, and the consulate will forward a recommendation for consent to

reapply for admission and visa issuance to the CBP Admissibility Review Office for a decision. Further, if CBP denies the Form I-212, the Applicant may appeal the denial to our office.
In light of the foregoing, the appeal of the denial of the Form I-212 will be dismissed as a matter of discretion.[1]

ORDER: The appeal is dismissed.

[1] We note here that the Director also made a determination regarding whether the Applicant warrants a favorable exercise of discretion; however, as our basis for denial is dispositive of the Applicant's appeal, we decline to reach and hereby reserve the Applicant's additional appellate arguments regarding this issue.