U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29658066

Date: JAN. 29, 2024

Appeal of Newark, New Jersey 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 he 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 Newark, New Jersey Field Office denied the application as a matter of discretion, finding that the favorable factors in his case did not outweigh the unfavorable ones, and concluding 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. 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 the Applicant entered the United States without admission in February 2005. He was personally served with a Notice to Appear, including oral notice in the Spanish language, and he was informed of the consequences if he failed to appear for his removal hearing scheduled for [redacted] [redacted] 2005, in Texas. The Applicant failed to appear for his hearing and was ordered removed *in absentia* by an Immigration Judge.

The Director denied the application as a matter of discretion, noting the favorable and unfavorable factors and concluding that because the Applicant would become inadmissible under section 212(a)(6)(B) of the Act for failing to attend removal proceedings without reasonable cause, for which there is no waiver, no purpose would be served in approving the Form I-212. On appeal, the Applicant provides copies of previously submitted evidence and contends that he is not inadmissible under section 212(a)(6)(B) of the Act because he had reasonable cause for failing to attend his removal hearing. He asserts that after his release from immigration custody in Texas, he moved to New Jersey, and paid an immigration attorney to file a Motion for Change of Venue (Motion). The Applicant contends that he was not aware the attorney failed to file the Motion and he first learned that he was subject to the *in absentia* removal order when a police officer informed him during a traffic stop.

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. 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."[2]

Here, the record establishes that the Applicant was properly served with a Notice to Appear in February 2005, which provided the date and time of his [redacted] 2005 hearing. Though the Applicant asserts he did not appear for the hearing because he paid an attorney to change the venue to New Jersey, the record demonstrates that the hearing notice was personally served to the Applicant, including oral notice in the Spanish language, and he was informed of the consequences if he failed to

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

[2] 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).

appear for his removal hearing. As the Applicant notes in his affidavit, he remembers that he was told he "needed to appear for the court hearing on [redacted], 2005, at [redacted], Texas" and he "recalled the immigration officer explaining to [the Applicant] about the consequences for failing to appear for the court hearings."

An application for permission to reapply for admission is denied, in the exercise of discretion, to a noncitizen 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 his departure under section 212(a)(6)(B) of the Act, and there is no waiver available for this ground of inadmissibility, his application for permission to reapply for admission will remain denied as a matter of discretion.

ORDER: The appeal is dismissed.