



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

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

MATTER OF G-Z

DATE: DEC. 11, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-212, APPLICATION FOR PERMISSION TO REAPPLY FOR ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR REMOVAL

The Applicant, a native and citizen of China, seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant entered the United States without inspection on May 16, 1998. On May 25, 1998, the Applicant filed a Form I-589, Application for Asylum and for Withholding of Removal. On April 16, 1999, the Immigration Judge ordered the Applicant's Applications for Asylum and Withholding of Removal denied. On April 16, 1999, the Immigration Judge ordered the Applicant's Applications for Asylum and Withholding of Removal denied. The Immigration Judge further noted that the Applicant was permanently barred from any immigration benefits under the Act for having knowingly filed a frivolous asylum application pursuant to section 208(d)(6) of the Act. The Applicant was also ordered removed to China. On March 22, 2002, the Board of Immigration Appeals (BIA) affirmed the decision of the Immigration Judge. The Applicant was removed from the United States on October 9, 2012. On May 1, 2015, the Form I-130, Petition for Alien Relative, filed by the Applicant's spouse, previously approved on July 20, 2012, was revoked based upon his frivolous asylum application. The Applicant was determined to be inadmissible to the United States pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), as an alien previously removed. The Applicant seeks permission to reapply for admission to the United States in order to reside in the United States.

In an January 7, 2015 decision, the Director indicated that the Applicant was also inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than one year and for seeking readmission within 10 years of his last departure from the United States. The Director noted that as the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied in a separate decision, the Applicant would remain inadmissible even if the Form I-212 was granted and thus, the Director denied the Form I-212 as a matter of discretion.

On appeal, the Applicant indicates that he did not speak English when he applied for asylum, that the asylum forms and documents were prepared by his lawyer, and that he was never informed about section 208(d)(6) of the Act and the serious consequences of violating the section. In support of the instant appeal, the Applicant submits a statement, medical and financial documentation, photographs and identification documents for his spouse, children and other family members on appeal. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years 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.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's 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 aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

Section 208(d)(6) of the Act provides in pertinent part:

Asylum Procedure. –

.....

Frivolous applications. - If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any

benefits under this Act, effective as of the date of a final determination on such application.

As noted above, an Immigration Judge determined that the Applicant had submitted a frivolous application for asylum and was ineligible for any benefits under the Act pursuant to section 208(d)(6) of the Act. The decision was affirmed by the BIA.

The Applicant is permanently ineligible for any benefit under the Act because he was determined by an Immigration Judge to have knowingly made a frivolous application for asylum. Although the Applicant asserts that he was unaware of the consequences of section 208(d)(6) of the Act, the official transcript of the Immigration Judge's hearing establishes that he was specifically notified of the consequences under section 208(d)(6) of the Act of making a frivolous asylum claim. Furthermore, with respect to the Applicant's assertions that he did not speak English and he did not prepare the forms and documents pertaining to his asylum request, the Applicant had the duty and the responsibility to review the application and any supporting documentation (and obtain translations if anything was not clear to him) prior to submission.

The Act makes clear that a foreign national seeking admission must establish admissibility "clearly and beyond doubt." *See* section 235(b)(2)(A) of the Act; *see also* section 240(c)(2)(A) of the Act. The same is true for demonstrating admissibility in the context of an application for adjustment of status. *See generally* *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008); *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008); *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). As a result of the removal order, the Applicant is inadmissible under section 212(a)(9)(A) of the Act. He therefore requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. Permission to reapply for admission is a benefit under the Act for which the applicant is permanently ineligible pursuant to section 208(d)(6) of the Act, because he was determined by an Immigration Judge to have knowingly made a frivolous application for asylum.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of G-Z-*, ID# 13906 (AAO Dec. 11, 2015)