U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9018187

Date: SEPT. 28, 2020

Appeal of Houston, Texas Field Office Decision

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

The Applicant 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), because she is admissible for having been previously ordered removed.

The Director of the Houston, Texas Field Office denied the application as a matter of discretion, explaining that the Applicant had not established that she is an applicant for an immigrant visa who has been found inadmissible. On appeal, the Applicant asserts that she is not required to have filed her visa application or completed her visa interview before seeking permission to reapply for admission.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. This office reviews the questions in this matter *de novo*. *See 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

An "arriving alien" who has been ordered removed under section 235(b)(1) of the Act or at the end of proceedings under section 240 initiated upon the 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. Section 212(a)(9)(A)(i) of the Act.

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) 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."

II. ANALYSIS

The record reflects that the Applicant was subject to an expedited removal order under section 235(b)(1) of the Act in [ ] 2018, and she was removed to Mexico on the same date. Accordingly, she is inadmissible under section 212(a)(9)(A)(i) of the Act.[1]

The Director denied the Form I-212 as a matter of discretion, indicating that approval would not serve any purpose and explaining that the Applicant has not established that she is an applicant for an immigrant visa with the U.S. Department of State who has been interviewed by a consular officer and found inadmissible.

The Applicant acknowledges that approval of permission to reapply for admission is discretionary. She asserts, though, that the Director's decision was an abuse of discretion because neither the Act, nor the regulations, nor the form instructions require an applicant to have completed their visa interview and been found inadmissible before filing their Form I-212.

In support, the Applicant refers to those items to assert that a Form I-212 may be filed before a consular interview. She also references comments by U.S. Citizenship and Immigration Services (USCIS) during a Provisional Waiver Engagement with stakeholders on September 20, 2016. According to the "Questions and Answers," USCIS was asked when a Form I-212 should be filed in relation to an I-130, Petition for Immigrant Relative. USCIS responded that "[i]n general, a Form I-212 is an ancillary application that supports an application for adjustment of status or an immigrant visa application. However, it can be filed at any time." The Applicant contends that this public statement should be deemed a description of USCIS' policy; however, the response reflects interpretation of USCIS policy and does not constitute binding legal authority. In contrast, page 2 of the Form I-212 instructions indicates that individuals who are inadmissible under section 212(a)(9)(A) of the Act "may file Form I-212 if" they are an applicant for an immigrant visa, an applicant for adjustment of status, an applicant who wishes to seek admission as a nonimmigrant at a U.S. port-of-entry who is not required to obtain a nonimmigrant visa, or an applicant for a nonimmigrant visa at a U.S. Consulate. As the Applicant acknowledges, she does not fall within any of these four categories.

The Applicant also references our non-precedent decision concerning an applicant who similarly filed the Form I-212 before being interviewed and found inadmissible by a consular officer. In that decision, we remanded the case to the Director for a decision on the merits, and the Applicant states that we should likewise determine that her Form I-212 was properly filed and warrants a decision on its merits. However, this prior decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case. Further, they may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. In o
ur earlier decision, we pointed to a significant intervening development in that applicant's visa application, namely, the issuance of a case number by the National Visa Center. This development—as the Applicant here acknowledges—indicated that an I-130 or other petition had been approved after the

[1] Because she was removed as an "arriving alien," we withdraw the Director's finding that she is inadmissible under section 212(a)(9)(A)(ii) of the Act; however, permission to reapply is available under the same provision at section 212(a)(9)(A)(iii).

initial denial of the Form I-212.[2] By contrast, in the Applicant's case, the I-130 filed by her spouse remains pending, and therefore she does not have a basis on which to immigrate to the United States.

Since filing her appeal, the Applicant has also asserted that her employer has an approved "blanket" L petition and will allow her to apply for an L-1 nonimmigrant visa based on that petition. She also states that she has submitted an online nonimmigrant visa application, but her scheduled interview has been postponed due to the COVID-19 pandemic. However, she has not provided evidence supporting these assertions, and thus has not shown that she has another basis on which to return to the United States.

An application for permission to reapply for admission is properly denied, in the exercise of discretion, where no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964). Consequently, even if a consular interview and determination of inadmissibility are not threshold requirements for permission to reapply for admission, the Director did not err in determining that approval of the Form I-212 would serve no purpose, as the Applicant currently lacks a basis for returning to the United States as an immigrant or nonimmigrant. The application will therefore remain denied.

ORDER: The appeal is dismissed.

[2] The National Visa Center issues a unique case number and begins processing a visa application after USCIS has approved an immigrant petition. https://travel.state.gov/content/travel/en/us-visas/immigrate/national-visa-center/immigrant-visas-processing-general-faqs.html#ivp1.