U.S. Citizenship and Immigration Services

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

In Re: 21518939

DATE: JUL. 19, 2022

Appeal of Los Angeles, California Field Office Decision

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

The Applicant, a native and citizen of Mexico, seeks conditional approval of his application for 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); 8 C.F.R. § 212.2(j), for having been previously ordered deported. The Director of the Los Angeles, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission (application for permission to reapply), concluding that because the Applicant would become inadmissible under section 212(a)(6)(B) of the Act upon departure from the United States for failing to attend a deportation hearing and for which no waiver is available, he does not merit approval of his application for permission to reapply as a matter of discretion. On appeal, the Applicant submits a brief and evidence asserting his eligibility. 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 remand the matter to the Director for the entry of a new decision.

## I. LAW

Section 212(a)(6)(B) of the Act provides that any foreign national who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the foreign national's inadmissibility or deportability, and who seeks admission to the United States within five years of the foreign national's subsequent departure or removal, is inadmissible. There is no waiver for this inadmissibility.

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a foreign national who has been ordered removed under section 240 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. 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.

8 C.F.R. § 212.2(j) provides that a foreign national whose departure will execute an order of deportation shall receive a conditional approval depending upon their satisfactory departure.

However, the grant of permission to reapply does not waive inadmissibility under section 212(a)(9)(A) of the Act resulting from exclusion, deportation, or removal proceedings which are instituted subsequent to the date permission to reapply is granted.

Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *See Matter of Lee,* 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978) (discussing the different factors to be considered in the discretionary determination of whether an applicant merits approval of an application to permission to reapply). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *Matter of Tin,* 14 I&N Dec. 371, 373-74 (Reg'l Comm'r 1973); *see also Matter of Lee, supra*, at 278 (finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character, and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience").

In these proceedings, the burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). An applicant may submit any credible evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the weight to give that evidence. 8 C.F.R. § 214.11(d)(5).

## II. ANALYSIS

The record reflects that the Applicant was ordered deported *in absentia* on [redacted] 1996, and he has remained in the United States since then. As such, the Applicant would become inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure from the United States. The Applicant does not contest this finding. The issues on appeal are whether the Applicant, upon his departure from the United States, would become inadmissible under section 212(a)(6)(B) of the Act, and whether he merits conditional approval of his application for permission to reapply as a matter of discretion.

The Director determined that the Applicant would become inadmissible upon his departure under section 212(a)(6)(B) of the Act for failing to attend his deportation hearing. While the record reflects that the Applicant did not attend his deportation hearing on [redacted] 1996, we note that section 212(a)(6)(B) of the Act does not apply to a foreign national who was placed in deportation proceedings prior to April 1, 1997.[1] Accordingly, the Applicant would not become inadmissible under section 212(a)(6)(B) of the Act upon departure from the United States.

[1] *See* USCIS Interoffice Memorandum HQDOMOPS 70/21.1, *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 AD 07-18)* (March 3, 2009).

As the Director's decision to not favorably exercise discretion was based on a finding of inadmissibility under section 212(a)(6)(B) of the Act, we will remand the matter to the Director to determine whether the Applicant merits a favorable exercise of discretion.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision.