U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19731594

DATE: JUL. 21, 2022

Appeal of Nebraska Service Center Decision

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

The Applicant, a native and citizen of the Dominican Republic, 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 removed. The Director of the Nebraska Service Center denied the Form I-212, Application for Permission to Reapply for Admission (application for permission to reapply), concluding that the Applicant did not establish he is an applicant for an immigrant visa who has been interviewed by a consular officer of the U.S. Department of State (DOS) and found inadmissible to the United States under a section of the Act which requires the filing of an application for permission to reapply. The Director, therefore, did not review the application on its merits. On appeal, the Applicant submits a brief asserting his eligibility. The Administrative Appeals Office reviews 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)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), provides that any "arriving alien . . . who has been ordered removed under section 235(b)(1) [of the Act, 8 U.S.C. § 1225(b)(1),] or at the end of proceedings under section 240 [of the Act, 8 U.S.C. § 1229a,] 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)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any alien, other than an arriving alien described in section 212(a)(9)(A)(i), who "has been ordered removed . . . or 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 (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 alien convicted of an aggravated felony) 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."

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant filed his application for permission to reapply in September 2020. He provided in part 2, section 5.a that he was removed from the United States under section 240 of the Act or any other provision of the law, or he departed the United States while an order of removal was outstanding. The Applicant did not list the date he was removed or the location from where he was removed in part 2, sections 6 and 7 respectively. The Director issued a request for evidence (RFE). The Director stated that the application for permission to reapply did not include evidence that it was based on a visa application with DOS, an adjustment of status application, or that the Applicant requested a conditional application for permission to reapply. The Director therefore requested evidence of a pending visa application if the Applicant was outside the United States, evidence of a pending adjustment of status application if inside the United States, or a copy of his removal order and a statement of explanation requesting a conditional application for permission to reapply if inside the United States and seeking a conditional application for permission to reapply.

In response to the RFE, the Applicant submitted a statement claiming that he entered the United States without inspection in [redacted] 1997, he was detained for 15 days, he was "sent back to the Dominican Republic," and he returned in 2010 "thru [*sic*] Puerto Rico." He also included a response to a Freedom of Information Act (FOIA)/Privacy Act request, which showed a search was completed of multiple U.S. Citizenship and Immigration Services databases with no records responsive to his request being found. Lastly, the Applicant submitted a response to another FOIA request reflecting that no records responsive to his request with U.S. Immigration and Customs Enforcement and Removal Operations were found. The Director reviewed these documents and denied the application for permission to reapply, concluding that the Applicant did not establish he is an applicant for an immigrant visa who has been interviewed by a DOS consular officer and found inadmissible under a section of the Act requiring an application for permission to reapply.

On appeal, the Applicant states that he is present in the United States after being removed, his departure will execute his removal order, and he is therefore requesting a conditional application for permission to reapply. This is contrary to his prior statement in which he indicated that he was removed from the United States in 1997 and returned in 2010. Regardless, the Applicant has not provided evidence that he was ever ordered removed from the United States. As the record does not establish, by a preponderance of the evidence, that the Applicant was ever removed from the United States and remained in the United States after being ordered removed, which are the underlying requirements for filing a conditional application for permission to reapply, no purpose would be served in adjudicating his conditional application for permission to reapply.

ORDER: The appeal is dismissed.