



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

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

In Re: 22585334

Date: NOV. 15, 2022

Appeal of Los Angeles County, California Field Office Decision

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

The Applicant, who was ordered excluded and departed the United States, is inadmissible and 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).

The Director of the Los Angeles County, California Field Office denied the Form I-212 application, as a matter of discretion, concluding the Applicant would still be inadmissible for misrepresentation under section 212(a)(6)(C)(i) of the Act even if the application was approved.

On appeal, the Applicant does not contest her inadmissibility findings, but asserts that the Director erred in denying the application. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will remand the matter for the entry of a new decision consistent with our analysis below.

## I. LAW

Section 212(a)(9)(A)(ii) of the Act provides in part that a foreign national, other than an arriving 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.

A foreign national 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 continuous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

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). 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. *See Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973).

## II. ANALYSIS

The Applicant concurrently filed a Form I-601, Application to Waive Inadmissibility Grounds (I-601 application) with the instant I-212 application seeking a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for a material misrepresentation and for unlawful presence. The Director denied the I-601 application, concluding that the Applicant did not establish that her qualifying relative, her lawful permanent resident spouse, would experience extreme hardship if her waiver was not granted.

The Director denied the I-212 application, concluding that since the Applicant's I-601 application was denied, she would remain inadmissible to the United States even if her I-212 application was granted. The Director determined that this remaining inadmissibility was a negative factor that warrants denial of the I-212 application as a matter of discretion. *See Matter of J-F-D-*, 10 I&N Dec. 694 (Reg'l Comm'r 1963).

The Applicant appealed the Director's denial of her I-601 application. On appeal, we withdrew the Director's denial and remanded the matter back to the Director for the entry of a new decision.<sup>1</sup> Therefore, we will also remand this matter back to the Director for the entry of a new decision.

In denying the I-212 application, the Director did not assess whether the Applicant merits conditional approval of her application as a matter of discretion, so we will also remand the matter so that she may weigh the positive and negative factors in the Applicant's case and evaluate whether she merits permission to reapply for admission as a favorable exercise of discretion. The Director should consider the entire record, including the brief and additional evidence provided on appeal, and may request any additional evidence considered pertinent to the new determination and any other issues. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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

---

<sup>1</sup> Our appellate decision in the appeal of the Applicant's I-601 application was ID# 22585536 (AAO Nov. 15, 2022).