



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

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

In Re: 22740008

Date: OCT. 28, 2022

Appeal of Boston, Massachusetts 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 he will be inadmissible upon departing from the United States for having been previously ordered removed. *See* section 212(a)(9)(A)(ii) of the Act. Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion.

The Director of the Providence, Rhode Island Field Office denied the application, concluding that the Applicant would become inadmissible under section 212(a)(6)(B) of the Act, for failing to attend removal proceedings without reasonable cause, and there is no waiver for this ground of inadmissibility. The Applicant later filed a motion to reconsider that was dismissed by the Director of the Boston, Massachusetts Field Office. The matter is now before us on appeal.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Applicant has not met this burden.

I. LAW

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any noncitizen, 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 a noncitizen convicted of an aggravated felony) is inadmissible. Noncitizens 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 noncitizen'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. *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. *Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973).

Any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the noncitizen's inadmissibility or deportability and who seeks admission to the United States within five years of such noncitizen's subsequent departure or removal is inadmissible. Section 212(a)(6)(B) of the Act.

II. ANALYSIS

The Applicant is currently in the United States and seeks permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before departing the United States.¹ The record indicates that the Applicant will become inadmissible upon departing the United States under section 212(a)(9)(A)(ii) of the Act.²

The Applicant contends that he is eligible to seek Form I-212 relief and that he is not inadmissible under section 212(a)(6)(B) of the Act because he had reasonable cause for not attending his removal hearing. Further, the Applicant asserts that even if he was found inadmissible under section 212(a)(6)(B) of the Act, the Director should have completed a full discretionary analysis and determined that his favorable factors outweigh the negative.

We first note that under section 212(a)(6)(B) of the Act, the inadmissibility period applies to any noncitizen who, without reasonable cause, fails to attend a removal proceeding and who seeks admission to the United States within five years of such noncitizen's *subsequent* departure or removal. The Applicant has not yet departed the United States, but upon his departure he will be subject to inadmissibility under section 212(a)(6)(B) of the Act.

We find the record supports the Director's determination that the Applicant would become inadmissible under section 212(a)(6)(B) of the Act, for failing to attend removal proceedings without reasonable cause, and there is no waiver for this ground of inadmissibility. There is no statutory definition of the term "reasonable cause" as it is used in section 212(a)(6)(B) of the Act, but guiding USCIS policy provides that "it is something not within the reasonable control of the [noncitizen]."³ Here, the record establishes that the Applicant was properly served with a notice to appear in

¹ The approval of his application is conditioned upon departure from the United States and will have no effect if the Applicant does not depart.

² The record reflects that on 2005, the Applicant was ordered removed *in absentia* by an immigration judge in Boston, Massachusetts.

³ Memorandum from Lori Scialabba, Associate Director for Refugee, Asylum & International Operations Directorate, et al., USCIS, HQ 70/21.1 AD07-18, *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 AD07-18) (Mar. 3, 2009).

2005, which provided the date and time of his [redacted] 2005 master calendar hearing. The record further reflects that notice of the Applicant's [redacted] 2005 hearing was personally served on the Applicant on [redacted] 2005. The notice to appear is signed by the Applicant and just above his signature the document states that he was "provided oral notice in the Spanish language of the time and place of his...hearing and of the consequences of failure to appear."

On appeal, the Applicant contends he had reasonable cause for not attending his removal hearing. The Applicant asserts that he was only 18 years of age and could not speak English when he was apprehended by border patrol agents in [redacted] 2005. The Applicant states he was not informed of the consequences of signing the notice to appear and claims that this document and the consequences of him not attending the removal hearing were not explained to him in Spanish. The Applicant asserts that if he had known the consequences of failing to appear for his removal hearing he would have appeared. The Applicant indicates that he had "great fear" related to returning to El Salvador in [redacted] 2005 "because his father had been murdered and the perpetrator had not been caught." Further, the Applicant states that the Form I-212 instructions do not require the submittal of evidence related to reasonable cause; and therefore, this evidence was not provided.⁴ The Applicant also indicates that the Director erred in concluding there was no purpose served in providing a full discretionary analysis weighing all positive and negative factors.

As discussed, guiding USCIS policy provides that reasonable cause is something not within the reasonable control of the noncitizen. Here, there is little evidence to support a conclusion that the Applicant did not attend his removal hearing due to circumstances beyond his reasonable control. As noted, the notice to appear signed by the Applicant in [redacted] 2005 clearly indicated that he was provided with oral notice in Spanish of the time and place of his hearing and the consequences of not attending. Further, the Applicant's own testimony conflicts with his claim that he was not aware of the time and place of the hearing, as he stated in an affidavit that he "did not attend the Immigration Court hearing that day because I was young, inexperienced and terribly afraid of returning to El Salvador." Likewise, the Applicant also stated that he spoke with other immigrants in Massachusetts, and they informed him not to attend the hearing, or he would be deported.

Again, the Applicant's own statements conflict with his claim that he did not understand the nature of the notice to appear he signed in [redacted] 2005, and that he did not understand his obligation to attend the removal hearing. In fact, the Applicant's own testimony indicates that he consciously avoided attending the removal hearing to avoid the risk of being deported. In addition, the Applicant provides insufficient assertions and supporting evidence to support a conclusion that there were any reasons beyond his reasonable control preventing him from attending the removal hearing in [redacted] 2005. Therefore, the Applicant has not demonstrated reasonable cause for not attending his removal hearing.

We also disagree with the Applicant's assertion on appeal that the Director erred in not providing a full discretionary analysis and in concluding that it served no purpose. An application for permission to reapply for admission is denied, in the exercise of discretion, to a noncitizen who is mandatorily inadmissible to the United States under another section of the Act. *Matter of Martinez-Torres*, 10 I&N

⁴ The Applicant has submitted assertions related to reasonable cause on appeal. Therefore, it would serve no useful purpose to remand the matter, and we will address the issue of reasonable cause in this decision.

Dec. 776 (Reg'l Comm'r 1964). We agree with the Director that approving the Form I-212 would serve no purpose as the Applicant would remain inadmissible under section 212(a)(6)(B) of the Act for a period of five years. As the Applicant will become inadmissible upon his departure under section 212(a)(6)(B) of the Act, and there is no waiver available for this ground of inadmissibility, his application for permission to reapply for admission will remain denied as a matter of discretion.

ORDER: The appeal is dismissed.