



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

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

In Re: 22740860

Date: OCT. 28, 2022

Appeal of New York City, New York 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 New York City, New York Field Office denied the application, concluding that the Applicant's unfavorable factors outweighed the favorable and denied the application as a matter of discretion. The Director further determined that U.S. Citizenship and Immigration Services (USCIS) records did not reflect that the Applicant had a Form I-130, Petition for Alien Relative, approved on his behalf, nor any other basis to have a Form I-485, Application to Register Permanent Residence or Adjust Status, approved.

On appeal, the Applicant contends that the Director did not sufficiently consider the hardship faced by his college age son, noting that he is not yet able to care for himself and requires the care of the Applicant, including financial support to continue to attend college. As such, the Applicant asserts that the Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, should be approved as a matter of discretion since his favorable factors outweigh the negative.

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).

As noted by the Director, the Applicant currently has no basis upon which to adjust to permanent resident status.<sup>1</sup> We recognize that individuals who currently reside in the United States may seek conditional approval of a Form I-212 prior to their departure from the United States under the regulation at 8 C.F.R. § 212.2(j). However, the Form I-212 instructions state that the form may be filed if a noncitizen is inadmissible under section 212(a)(9)(A) of the Act and they are: 1) an applicant for an immigrant visa; 2) an applicant for adjustment under INA 245; 3) 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 4) an applicant for a nonimmigrant visa at a U.S. Consulate.<sup>2</sup> Since the Applicant does not meet any of the criteria required to file the Form I-212, no purpose would be served in adjudicating his application for permission to reapply as it would not result in his adjustment of status to that of a noncitizen lawfully admitted for permanent residence. The appeal of the denial of the Form I-212 will therefore be dismissed as a matter of discretion.<sup>3</sup>

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The Applicant provides a 2012 notice reflecting that his wife had a Form I-130 approved on her behalf, but there is no indication from USCIS records or the submitted evidence that the Applicant has had any similar approved petition forming the basis for adjustment to permanent resident status.

<sup>2</sup> See form instructions at <https://www.uscis.gov/sites/default/files/document/forms/i-212instr.pdf>; see also 8 C.F.R. § 103.2(a)(1), which states in part that, "Every form, benefit request, or other document must be submitted to [Department of Homeland Security] and executed in accordance with the form instructions regardless of a provision of 8 CFR chapter I to the contrary. The form's instructions are hereby incorporated into the regulations requiring its submission."

<sup>3</sup> We further note that as the Applicant asserts that he has not departed the United States pursuant to the removal order, the record does not support a finding that he is currently inadmissible under section 212(a)(9)(A) of the Act for having departed the United States after being ordered removed.