U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-M-C-

DATE: MAY 25, 2018

APPEAL OF NEW YORK, NEW YORK FIELD OFFICE DECISION

APPLICATION: FORM I-212, APPLICATION FOR PERMISSION TO REAPPLY FOR ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR REMOVAL

The Applicant, a native and citizen of China, will be inadmissible upon his departure from the United States for having been previously ordered deported and seeks permission to reapply for admission to the United States. Immigration and Nationality Act (the Act) section 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services may grant in the exercise of discretion.

The Acting Director of the New York, New York Field Office denied the application, concluding that because the Applicant was also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), and no purpose would be served by granting the Applicant permission to reapply for admission while this inadmissibility remained.

On appeal, the Applicant contends that he is not inadmissible under section 212(a)(6)(C)(i) of the Act, and asserts that the Director's decision should be withdrawn and his application should be adjudicated on the merits.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further proceedings and for the entry of a new decision.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a foreign national, other than an "arriving alien," 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) 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 foreign national's reapplying for admission.

The Applicant currently resides in the United States and is seeking conditional approval of his application pursuant to 8 C.F.R. § 212.2(j) before departing, as he will be inadmissible upon his departure due to his prior deportation order. The approval of his application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if he fails to depart.

Section 212(a)(6)(C)(i) of the Act provides that any foreign national who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible.

II. ANALYSIS

The issue presented on appeal is whether the Director's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act requires denial of the Applicant's application as a matter of discretion. The Applicant does not contest his inadmissibility under section 212(a)(9)(A)(ii) of the Act, a finding supported by the record.[1]

The Director found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act for submitting in 1996 a Form I-102, Application for Replacement/Initial Nonimmigrant Arrival - Departure Document, which falsely indicated that he had been admitted to the United States, when he had actually entered without inspection.[2] On appeal, the Applicant contends that he is not inadmissible under section 212(a)(6)(C)(i) of the Act, and asserts that the Director's decision should be withdrawn and the application should be adjudicated on the merits.

We note that the Applicant is not seeking to adjust status within the United States, but is instead seeking conditional permission to reapply for admission in order to depart the United States and apply for an immigrant visa at the U.S. Department of State consular office in Guangzhou, China. In these circumstances, as stated in the Instructions to the Form I-601, Application for Waiver of Grounds of Inadmissibility, it is the consular officer's responsibility to determine an applicant's inadmissibility and direct an applicant to file a Form I-601, if required. The Applicant's immigrant visa application remains pending with the consular office in China, and there is no indication in the record that a consular officer has found the Applicant inadmissible pursuant to section 212(a)(6)(C)(i), or any other section of the Act. Accordingly, the Director's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act is premature, and we must withdraw the Director's decision and remand the matter for him to determine whether the Applicant merits conditional approval of his application as a matter of discretion.

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[1] The Applicant was ordered deported on May 1, 1996, and granted voluntary departure in lieu of deportation, provided that he depart the United States by February 1, 1997. He filed a motion to reopen with the Immigration Court, which was denied on October 29, 1996. The record indicates that the Applicant never departed the United States, which resulted in a final order of deportation.

[2] We note that the record contains two almost identical Form I-102s filed by the Applicant on different dates. Both applications were denied.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of Y-M-C-*, ID# 1518339 (AAO May 25, 2018)