



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

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

In Re: 16729052

Date: APR. 20, 2022

Appeal of Phoenix, Arizona Field Office Decision

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

The Applicant has filed a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, seeking 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 she 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.

The Director of the Phoenix, Arizona Field Office denied the Form I-212 application. The Director concluded that the Applicant did not demonstrate eligibility for the application because she had not left the United States and did not establish she would do so in the future.

The matter is now before us on appeal. On appeal, the Applicant asserts that her Form I-212 application should be granted, claiming that she is deserving of a favorable exercise of discretion.¹ Upon *de novo* review, we will dismiss the appeal. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides in relevant part that any noncitizen 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 is inadmissible.

Noncitizens who are 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 contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

¹ The Applicant indicated on page 2 of her Form I-290B, Notice of Appeal or Motion, which she filed in October 2020, that she would "submit [her] brief and/or additional evidence to [us] within 30 calendar days of filing the appeal." As of the date of this decision, we have not received her appellate brief or additional evidence. We are therefore adjudicating the appeal based on the record before us, including a short statement she included on page 6 of the Form I-290B.

II. ANALYSIS

The Applicant entered the United States in February 1994, through the visa waiver program (VWP), and was authorized to remain in the United States until May 1994. *See* Section 217 of the Act, 8 U.S.C. § 1187. The U.S. Immigration and Customs Enforcement (ICE) issued an order of removal against the Applicant for being a VWP overstay, pursuant to Section 217 of the Act. If the Applicant were to depart the United States, she would execute the removal order and become inadmissible under Section 212(a)(9)(A)(ii) of the Act.

The record indicates that in 2018, the Applicant's adult child filed a Form I-130, Petition for Alien Relative, on the Applicant's behalf, which the U.S. Citizenship and Immigration Services (USCIS) approved in 2019. Also in 2018, the Applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status, seeking to adjust status to that of a lawful permanent resident, based on the Form I-130 petition. In 2019, the Director denied the Form I-485 application based on discretion. In 2020, the Applicant filed a Form I-212 application and a second Form I-485 application, seeking adjustment of status based on the approved I-130 petition. The Director denied both applications based on discretion.

Although ICE has issued a removal order, the Applicant is not inadmissible under Section 212(a)(9)(A)(ii) of the Act, until she departs the United States. A noncitizen may file a conditional Form I-212 application before departing the United States pursuant to the regulation at 8 C.F.R. § 212.2(j), in anticipation of applying for consular processing of an immigrant visa application abroad. But in this case, the Applicant has not indicated that she intends to depart the United States. Indeed, the Applicant has asserted that she would experience hardship if she had to leave the United States. In the decision denying the Form I-212 application, the Director stated: "as evidenced by [the Applicant's Form I-485] application for adjustment of status, [she is] not requesting consent to reapply for admission on an advance, conditional basis, prior to applying for an immigrant visa abroad." As the Applicant, who has not departed the United States, is not currently inadmissible under Section 212(a)(9)(A)(ii) of the Act, and as she has expressed no intention to leave the United States, no purpose would be served at this time to grant her Form I-212 application. *See* Section 212(a)(9)(A)(iii) of the Act.

In the short statement that the Applicant included on page 6 of her Form I-290B, Notice of Appeal or Motion, the Applicant argued that the Director erred in denying her Form I-485 application. We note that the Applicant's Form I-485 application is a separate proceeding, over which we have no appellate authority. *See* 8 C.F.R. § 245.2(a)(5)(ii).

In conclusion, the Applicant has not shown that she is inadmissible under Section 212(a)(9)(A)(ii) of the Act, as she has not departed the United States, or that she intends to depart the United States, which would render her inadmissible under Section 212(a)(9)(A)(ii) of the Act. *See* 8 C.F.R. § 212.2(j). Under these circumstances, no purpose would be served at this time to grant her Form I-212 application, the Director thus properly denied the application in the exercise of discretion. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.