U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17624219

Date: DEC. 18, 2023

Motion on Administrative Appeals 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), after having been previously ordered removed.

The record indicates that the Applicant was ordered removed from the United States in 1996. The Applicant was subsequently granted Temporary Protected Status (TPS) and obtained a Form I-512L, *Authorization for Parole of an Alien Into the United States*, pursuant to the TPS provisions in section 244(f)(3) of the Act, 8 U.S.C. § 1254a(f)(3), and corresponding regulations at 8 C.F.R. § 244.15(a). The Applicant then traveled abroad and returned to the United States with that document in 2015. In April 2018, he filed a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), seeking adjustment of status to that of a lawful permanent resident.

The Director of the Tampa, Florida Field Office denied the Applicant's Form I-212, Application for Permission to Reapply for Admission (Form I-212), as a matter of discretion. The Director noted that the Applicant's Form I-485 had been denied because he remained in removal proceedings and U.S. Citizenship and Immigration Services (USCIS) was without jurisdiction to adjudicate his adjustment of status request.[1] We dismissed a subsequent appeal, finding the Applicant had not executed his removal order.

On motion to reopen and reconsider, the Applicant again asserts that the Director's decision finding that USCIS was without jurisdiction to adjudicate his application for adjustment of status was in error because his departure from the United States effectuated the removal order, thus bringing finality to the removal proceedings against him. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect

[1] USCIS does not have jurisdiction to grant or deny a request for adjustment of status under section 245 of the Act in any case in which the noncitizen is a respondent in removal or deportation proceedings before EOIR unless the noncitizen has been placed in proceedings as an "arriving alien." 8 C.F.R. §§ 245.2(a)(1), 1245.2(a)(1).

application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

The Applicant filed his application for permission to reapply with the Director concurrently with his Form I-485, and he indicated on the Form I-212 that he intends to adjust status in the United States. However, the Applicant has not demonstrated that he is eligible to adjust his status before USCIS. As the Director previously determined when denying the Applicant's Form I-485, the Applicant remains in removal proceedings on account of the removal order that an Immigration Judge issued in 1996. A TPS beneficiary who departs the United States after receiving prior travel authorization pursuant to section 244(f)(3) of the Act and returns with a valid travel document does not execute an outstanding final removal order and therefore remains in removal proceedings upon their return. *See Duarte v. Mayorkas*, 27 F.4th 1044, 1053-54 (5th Cir. 2022); *see also* 7 *USCIS Policy Manual* A.3(D) n. 23, https://www.uscis.gov/policy-manual.

Because the Applicant remains in removal proceedings, USCIS does not have jurisdiction over his adjustment of status request and has denied his underlying Form I-485. Therefore, as a matter of discretion, no purpose would be served in a granting him permission to reapply for admission, and we will dismiss the Applicant's combined motion to reopen and reconsider. *See Matter of Martinez-Torres*, 10 I&N Dec. 776, 776-77 (Reg'l Comm'r 1964); *see also I.N.S. v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.