U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19584058

Date: APR. 28, 2022

Appeal of Denver, Colorado 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. *See* Section 212(a)(9)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii). *See also* Section 212(a)(9)(C)(i)(II) of the Act. The Director of the Denver, Colorado Field Office denied the application on discretion. The Applicant appeals. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A noncitizen is inadmissible under Section 212(a)(9)(C)(i) of the Act if he or she was unlawfully present in the United States for an aggregate period of more than one year, or was ordered removed or deported, and who then enters or attempts to reenter the United States without being admitted. Unlike someone who is inadmissible under Section 212(a)(9)(A) of the Act,[1] a noncitizen who is inadmissible under Section 212(a)(9)(C)(i) of the Act may not seeking a conditional approval of a Form I-212 application while he or she is still in the United States. *See* Section 212(a)(9)(C)(ii) (providing that a noncitizen must have remained outside the United States for more than 10 years before being eligible to seek permission to reapply for admission); *see also Berrum-Garcia v. Comfort*, 390 F. 3d 1158, 1166 (10th Cir. 2004).

II. ANALYSIS

In this case, the record shows, and the Applicant does not dispute, that he was deported to Mexico from the United States under a deportation order in [redacted] 1980. According to page 4 of his Form I-212 application, as well as his appellate brief, after being outside of the United States for more than 10 years, the Applicant returned to the United States in 2020 without being admitted. His latest entry into the United States renders him inadmissible under Section 212(a)(9)(C)(i)(II) of the Act, because

[1] Under the regulation at 8 C.F.R. § 212.2(j), a noncitizen whose departure will execute an order of removal may, prior to leaving the United States, seek conditional approval of a Form I-212 application for permission to reapply for admission.

he departed the United States under an order of deportation in 1980, and then entered the United States without being admitted in 2020.

On appeal, the Applicant argues that he is not inadmissible under Section 212(a)(9)(C)(i)(II) of the Act, because "he remained outside of the United States for twenty years before reentry to the USA, more than 10 years longer than was required for tolling the removal bar." The Applicant cites *Matter of Torres-Garcia*, 23 I&N Dec. 866, 873 (BIA 2006) as support for his position. The cited legal authority, however, does not support the Applicant's contention. In fact, the cited legal authority supports the Director's denial of the Applicant's Form I-212 application on the ground that he is not eligible to seek a waiver of inadmissibility under Section 212(a)(9)(C)(i)(II) of the Act. *See also* Section 212(a)(9)(C)(ii) of the Act.

Specifically, *Matter of Torres-Garcia*, quoting Section 212(a)(9)(C)(ii) of the Act, explains: a noncitizen inadmissible under Section 212(a)(9)(C) "may only request permission to reapply for admission if [he or she] is 'seeking admission more than 10 years after the date of [his or her] last departure from the United States.'" *Matter of Torres-Garcia*, 23 I&N Dec. at 873. The decision further states that "[a] request for a waiver of the [S]ection 212(a)(9)(C)(i)(II) ground of inadmissibility that is made less than 10 years after the [noncitizen's] last departure from the United States simply cannot be granted." The 10-year timeframe discussed in the Act and in *Matter of Torres-Garcia* refers to the period that a noncitizen must wait , while he or she is physically outside of the United States, before he or she is eligible to file a Form I-212 application to waive inadmissibility under Section 212(a)(9)(C)(i)(II) of the Act.

Here, as the Applicant had returned to the United States without being admitted in 2020, he is ineligible to seek a waiver of inadmissibility under Section 212(a)(9)(C)(i)(II) by filing a Form I-212 application, because he is now physically in the United States. As discussed above, a noncitizen who is inadmissible under Section 212(a)(9)(C) of the Act may not seeking a conditional approval of a Form I-212 application while he or she is still in the United States. *See* Section 212(a)(9)(C)(ii) of the Act. Instead, the Applicant must leave the United States, wait outside the United States for at least 10 years, before he is eligible to seek a waiver of inadmissibility under Section 212(a)(9)(C)(i)(II) of the Act.

On appeal, the Applicant also cites the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. No. 106-553, 114 Stat. 2762 (2000), and Section 245(i) of the Act, 8 U.S.C. § 1255(i). These cited statutes, however, do not permit noncitizens, such as the Applicant, who are physically in the United States, to seek a waiver of inadmissibility under Section 212(a)(9)(C)(i)(II). *See Matter of Briones*, 24 I&N Dec. 355, 371 (BIA 2007) (holding that noncitizens who are inadmissible under Section 212(a)(9)(C)(i) of the Act cannot qualify for Section 245(i) adjustment, absent a waiver of inadmissibility).

III. CONCLUSION

Based on the reasons we have discussed above, we will dismiss the Applicant's appeal. The Applicant has not demonstrated that, while he is physically in the United States, he is eligible to seek a waiver of inadmissibility under Section 212(a)(9)(C)(i)(II) of the Act, even though he was outside of the

United States for over 10 years before his latest entry without being admitted in 2020. *See* Section 212(a)(9)(C)(ii) of the Act.

ORDER: The appeal is dismissed.