U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19260328

Date: APR. 29, 2022

Appeal of Nebraska Service Center Decision

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

The Applicant was found inadmissible for entering the United States without being admitted after having previously been ordered removed. Immigration and Nationality Act (the Act) section 212(a)(9)(C)(i)(II), 8 U.S.C. § 1182(a)(9)(C)(i)(II). She is presently in Ethiopia and seeks permission to reapply for admission into the United States. Section 212(a)(9)(C)(ii) of the Act.

The Director of the Nebraska Service Center denied the Form I-212, concluding that the Applicant does not meet the requirements for consent to reapply for admission because 10 years have not elapsed since the date of her last departure from the United States. On appeal, the Applicant contests her inadmissibility under section 212(a)(9)(C)(i)(II) of the Act and argues that the Director erred in determining that she was barred from relief.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(C)(i) of the Act provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than 1 year, or has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible. Noncitizens found inadmissible under section 212(a)(9)(C) of the Act may seek permission to reapply for admission under section 212(a)(9)(C)(ii), which provides that inadmissibility shall not apply to a noncitizen seeking admission more than ten years after the date of last departure from the United States if, prior to the reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

II. ANALYSIS

The record indicates that in November 1998 the Applicant attempted to enter the United States by using the Canadian citizenship card and driver's license of another individual. She was found

inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation, received an order of removal under section 235(b)(1) of the Act, and was removed to Canada.[1]

In denying the application, the Director stated: "Our records show that you were removed from the United States under removal order in 1998 and illegally returned (or attempted to return) to the United States without being admitted on or about February 1, 1999. Therefore, you are inadmissible under INA section 212(a)(9)(C)(i)(II)."

On appeal, the Applicant contests the Director's determination that she returned to the United States in February 1999 "without being admitted." She asserts that she "presented herself for inspection and admission and was waived [*sic*] into the United States by a border patrol officer on February 1, 1999." In Part 10 of her Form I-601, the Applicant asserted that "[i]n 1999, I rode with two men to the United States. To the best of my recollection, we arrived at the border in [redacted] NY and the officer waved us through without checking our identification." Additionally, in a February 2019 notarized declaration offered with her Form I-601, the Applicant stated: "In 1999, I rode with two [redacted] residence guys that happened to go to the U.S. As I recall correctly, we have arrived at the border in [redacted] NY and the officer told us to go through the gate without checking our ID."

With the appeal, the Applicant provides a signed statement (dated January 26, 2021) offering further explanation about how she "reentered the United States of America in 1999." The Applicant asserts:

> When we approached the [redacted] border crossing, [redacted] (the driver) asked me to give him my passport. So, I did. And at the checkpoint, [redacted] open the window of the car on his side and greeted the officer. The officer also asked to put down the back window on my side. The officer asked again what the purpose of our trip was. [redacted] answered "shopping." Even though [redacted] was holding and ready to show our passports to the officer, he said "have a good day." Then we drove away.

The record, however, includes evidence that contradicts the Applicant's claim that she presented herself for inspection and admission and was waved into the United States by a border patrol officer on February 1, 1999. On her Form I-485, Application to Register Permanent Residence or Adjust States, filed on April 30, 2001, the Applicant indicated in Part 1 that her "Date of Last Arrival" was "02/01/99" and she wrote in Part 3 that "I entered undetected (unauthorized) through Canadian Border." In addition, the Applicant filed Supplement A to her Form I-485 with the accompanying fee of $1000.00. Under Part 2 (item 4) of Supplement A, the Applicant checked the box indicating that that she "last entered the United States . . . Without inspection." She also wrote in Part 2 (item 6) that she was "applying for adjustment of status" as "Not inspected." The Applicant signed both her Form I-485 and Supplement A, certifying under penalty of perjury that the application and the submitted evidence are all true and correct.[2] *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R.

[1] Upon the Applicant's removal from the United States, she signed Form I-296, Notice to Alien Ordered Removed/Departure Verification, which informed her that she was barred from reentering the United States for five years, and which advised her of the consequences should she reenter or attempt to reenter the United States during the prohibited period.

[2] Both Part 4 of Form I-485 and Part 3 of Supplement A require an applicant to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that this application, and the evidence submitted with, is all true and correct."

§ 103.2(a)(2). Furthermore, the Applicant appeared for her adjustment of status interview on June 11, 2003, was interviewed under oath, affirmed the information she provided on the Form I-485, and re-signed the application at the bottom of page 4.

The Applicant's recollections from 2019 and 2021 relating to her February 1999 U.S. entry are inconsistent with the information she provided under penalty of perjury in both Form I-485 and Supplement A in April 2001, and at her adjustment of status interview in June 2003. The appellate submission does not resolve these discrepancies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Because the Applicant certified under penalty of perjury in Form I-485 and Supplement A that she last entered the United States in February 1999 "undetected," "unauthorized," "without inspection," and "not inspected," we agree with the Director that she is inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

A noncitizen who is inadmissible under section 212(a)(9)(C)(i) of the Act may not seek permission to reapply unless they have been outside the United States for more than 10 years since the date of their last departure from the United States. *Matter of Torres-Garcia*, 23 I&N Dec. 866, 873 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C)(i) of the Act, it must be the case that the noncitizen's last departure was at least 10 years ago, they have remained outside the United States, and USCIS has granted them permission to reapply for admission into the United States. *Id.* Here, the Applicant's last departure was in August 2018 and she has not remained outside of the country for 10 years, as required. We therefore agree with the Director that the Applicant is currently statutorily ineligible to apply for permission to reapply for admission.

ORDER: The appeal is dismissed.