U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16513277

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 Mexico 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, Application for Permission to Reapply for Admission, 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 asserts that she "was not removed from the United States" and instead "was voluntarily returned."

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)(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

In this case, the Applicant was refused an immigrant visa based on her inadmissibility under section 212(a)(9)(C)(i)(II) of the Act because she was removed in [redacted] 1998 and then reentered the United States without being admitted that same month, thus subjecting her to a 10-year bar from admission

under section 212(a)(9)(C)(ii).[1] USCIS records reflect that she was expeditiously removed in 1998. In addition, the record indicates that the Applicant reentered the United States without being admitted in [redacted] 2008, was apprehended in [redacted] Arizona, received an expedited removal order on [redacted] 2008, and was removed to Mexico on [redacted] 2008. She subsequently reentered the United States without being admitted in December 2008 and remained here until May 2019.[2]

With respect to her 1998 removal, the Petitioner argues on appeal that "[i]t is my understanding that I was voluntarily returned to Mexico instead of being removed to Mexico," but the record does not support her claim. Nor does her appellate submission include evidence demonstrating that she was voluntarily returned to Mexico.

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 May 2019 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.

[1] In 2019, a U.S. Department of State consular officer found that the Applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act because of her expedited removal in 1998, and then attempting to reenter, and reentering the United States without being inspected and admitted or paroled a few days later. The Director noted the inadmissibility finding and determined that the Applicant did not establish her eligibility for permission to reapply for admission because she has not remained outside the United States for 10 years since her May 2019 departure to Mexico.

[2] The "Address History" provided on the Applicant's Form I-212 indicates that she resided in [redacted] California from 2008 until 2012 and in [redacted] California from 2012 until May 2019.