U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21920195

Date: AUG. 25, 2022

Appeal of San Francisco, California Field 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)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii). The Director of the San Francisco, California Field Office denied the application as a matter of discretion. The matter is now before us on appeal. On appeal, the Applicant submits new evidence and asserts that the record establishes he merits approval as a matter of discretion. We review the questions raised in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision.

The record indicates the Applicant, a citizen of Mexico, entered the United States in 1990 without inspection. He applied for asylum in 2000 and was referred to an immigration judge, who granted the Applicant voluntary departure in 2001 with an alternate order of removal to Mexico. The Applicant departed the United States in 2004 and reentered in 2005 by presenting a fraudulent Form I-551, Temporary Evidence of Lawful Admission for Permanent Residence, and he continues to reside in the United States.

The Director noted that the Applicant had been found inadmissible under sections 212(a)(6)(C)(i) of the Act for fraud or misrepresentation and 212(a)(9)(B)(i) for unlawful presence and denied the application, concluding, in part, that as no Form I-601, Application for Waiver of Grounds of Inadmissibility, had been approved for these grounds of inadmissibility, he would remain inadmissible even if U.S. Citizenship and Immigration Services were to approve his Form I-212. The Director also found that the negative equities of the case outweighed the positive equities and the Applicant did not warrant a favorable exercise of discretion.

The Director denied the Applicant's Form I-601, and in a separate decision, we remanded an appeal of the denial, noting that the Applicant submitted new evidence relating to the claimed hardship the Applicant's spouse would experience if he were removed to Mexico. The Applicant also submits material evidence with the instant appeal that relates to his claim that he, his spouse, and his family members will suffer hardship if his request for permission to reapply for admission to the United States is denied. In addition, the record reflects the Director did not fully address previously submitted evidence of all pertinent and significant positive equities in the record, including evidence regarding

the claimed hardship to the Applicant and his U.S. citizen and lawful permanent resident (LPR) family members.[1]

We further note that the Applicant appears to be subject to section 212(a)(9)(C) of the Act[2] and may not be currently eligible to seek permission to reapply for admission under section 212(a)(9)(C)(ii) to overcome this inadmissibility.[3] The Applicant reentered the United States in 2005 without being admitted by presenting a fraudulent Form I-551 stamp and this reentry was subsequent to his removal order and unlawful presence of more than one year. A noncitizen who enters the United States after falsely claiming to be a returning LPR is not considered to have been procedurally inspected and admitted because a returning LPR generally is not an applicant for admission. *See* section 101(a)(13)(C) of the Act (defining and discussing the terms admitted and admission); *see also Matter of Collado-Munoz*, 21 I&N Dec. 1061 (BIA 1997) (noting the general rule that an individual lawfully admitted for permanent residence is not regarded as seeking admission); *see also* 7 USCIS Policy Manual B.2(A)(2), https://www.uscis.gov/policymanual (explaining, as guidance, that noncitizens who enter the United States after falsely claiming to be a returning LPR, similar to noncitizens who make a false claim to U.S. citizenship, are not considered to have been procedurally inspected and admitted because a returning LPR generally is not an applicant for admission).

In light of the issues noted above, we find it appropriate to remand the matter to the Director to determine whether the Applicant is eligible to seek permission to reapply for admission and if so, whether he merits a favorable exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

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[1] When considering whether a request for permission to reapply merits a favorable exercise of discretion, positive factors may include hardship to the applicant and U.S. citizen or lawful permanent resident relatives. *Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973).

[2] Section 212(a)(9)(C) of the Act provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than one 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).

[3] A noncitizen who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the noncitizen has been outside the United States for more than 10 years since the date of the noncitizen's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).