U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22465050

Date: DEC. 16, 2022

Appeal of Los Angeles, 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)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii).

The Director of the Los Angeles, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission into the United States Following Deportation or Removal (Form I-212). After weighing the positive and negative factors presented in the record, the Director concluded that the application did not warrant a favorable exercise of discretion. The matter is now before us on appeal.

In these proceedings, it is the applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides in relevant part that any noncitizen who has been ordered removed, or departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such departure or removal, is inadmissible. Noncitizens who are inadmissible under section 212(a)(9)(A)(ii) of the Act, and who have not remained outside the United States for a continuous period of 10 years, may seek an exception to this inadmissibility by requesting and obtaining permission to reapply for admission. Section 212(a)(9)(A)(iii) of the Act.

Noncitizens who reentered or attempted to reenter the United States without admission after being ordered deported, excluded, or removed are permanently inadmissible. Section 212(a)(9)(C)(i)(II) of the Act. An exception to this inadmissibility exists, however, for those noncitizens who seek admission more than 10 years after their last departure from the country and, who, prior to their return, request and obtain permission to reapply for admission. Section 212(a)(9)(C)(ii) of the Act.

For those noncitizens who establish their statutory eligibility to file an application to reapply for admission under section 212(a)(9)(A)(iii) or section 212(a)(9)(C)(ii) of the Act, approval of the

application is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval is warranted as a matter of discretion. *Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978).

II. ANALYSIS

The Applicant, a native and citizen of Mexico, states that he entered the United States without being inspected and admitted in 1977, briefly departed in 1980, and reentered without inspection and admission approximately one month later. The record reflects that U.S. immigration authorities placed him in deportation proceedings, and he was deported to Mexico on [redacted] 1994. The Applicant indicates that several days after his deportation, he once again re-entered without inspection and admission or parole and has continuously remained in the United States since that time.

Here, the Director concluded, and the Applicant concedes, that he is inadmissible under section 212(a)(9)(A)(ii) of the Act based on his [redacted] 1994 deportation from the United States. The record supports that determination. After weighing the positive and adverse factors presented, the Director determined that the application did not warrant a favorable exercise of discretion. On appeal, the Applicant asserts that the Director's decision contains errors of fact and improperly overemphasizes his criminal record and immigration violations over the favorable factors in his case.

For the reasons discussed below, we conclude that the Applicant is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act and is statutorily ineligible to apply for permission to reapply for admission to the United States. Accordingly, the application will remain denied.

It is undisputed that the Applicant reentered the United States without inspection following his deportation, an immigration violation that is specifically addressed under section 212(a)(9)(C)(i)(II) of the Act. The Applicant's reentry to the United States occurred prior to the enactment of this statutory provision, which was included in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, div. C Tit. III, Subtit. A. § 301, 110 Stat. 3009 (1996) (codified as 8 U.S.C. § 1182(a)(9)(C)(i)(II)). IIRIRA became effective on April 1, 1997. We note that U.S. Citizenship and Immigration Services (USCIS) has historically applied section 212(a)(9)(C)(i)(II) of the Act only to those previously removed noncitizens whose unlawful reentries (or attempted reentries) occurred on or after IIRIRA's effective date. Accordingly, the Director did not make a separate determination that the Applicant is permanently inadmissible under section 212(a)(9)(C)(i) of the Act, nor did the Applicant indicate that he was seeking an exception to inadmissibility under section 212(a)(9)(C)(ii).

However, in July 2022, the United States Court of Appeals for the Ninth Circuit, held that the provision at section 212(a)(9)(C)(i)(II) of the Act "applies retroactively to unlawful entries made before April 1, 1997, provided the alien did not apply for adjustment of status before that date." *Rivera Vega v. Garland*, 39 F.4th 1146, 1156 (9th Cir. 2022). This decision is binding on us in this matter, which arises under the Ninth Circuit's area of jurisdiction. Further, *Rivera Vega* is binding notwithstanding the fact that the Applicant filed his Form I-212 in 2021. We must generally apply the rules in place at the time of our review. *See, e.g., Thorpe v. Housing Auth. of City of Durham,* 393 U.S. 268, 281-82 (1969) (concluding that an appellate body must apply the law as it exists at the time it renders its decision).

The record indicates that the Applicant almost immediately re-entered the United States without inspection and admission or parole after being deported in [redacted] 1994. Further, the record does not indicate the Applicant's filing of an adjustment application before April 1, 1997. Thus, based on the evidence before us and binding Ninth Circuit caselaw, we conclude that the Applicant is permanently 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 apply for consent to reapply for admission unless they have been outside the United States for more than 10 years since the date of their last departure. *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). As such, individuals that require an exception to this permanent admissibility under section 212(a)(9)(C)(ii) of the Act are not eligible to file the Form I-212 while physically present in the United States, or prior to remaining outside the United States for 10 years.

Here, the Applicant is currently residing in the United States and does not indicate that he has departed since his last unlawful entry in 1994. He is currently statutorily ineligible to apply for permission to reapply for admission and will remain so unless he departs and remains outside the United States for 10 years.

Since the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments that his application, which sought an exception to his inadmissibility under section 212(a)(9)(A)(iii) of the Act, warrants a favorable exercise of discretion.[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"). The application for permission to reapply for admission must remain denied.

ORDER: The appeal is dismissed.

[1] No purpose would be served in considering the Applicant's request for permission to reapply under section 212(a)(9)(A)(iii) of the Act, as he would remain inadmissible under section 212(a)(9)(C)(i)(II) of the Act.