U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20184664

Date: MAY 03, 2022

Appeal of Imperial, California Field Office Decision

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

The Applicant will be inadmissible upon his departure from the United States for having been previously ordered deported and 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).

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a foreign national, other than an arriving alien who has been ordered removed under section 240 or any other provision of law, or who 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. Foreign nationals found inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act if, prior to the date of the reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Secretary of Homeland Security has consented to the foreign national's reapplying for admission.[1]

However, section 212(a)(9)(C)(i) of the Act also provides that any foreign national who has been ordered removed and who enters or attempts to reenter the United States without being admitted, is inadmissible. Foreign nationals found inadmissible under section 212(a)(9)(C)(i) 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 foreign national who seeks admission more than ten years after the date of their last departure from the United States if the Secretary of Homeland Security consents to their reapplying for admission prior to their attempt to be readmitted. A foreign national may not apply for permission to reapply unless they have been outside the United States for more than ten years since the date of their last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866

[1] It appears the Applicant currently resides in the United States and is seeking conditional approval of the application under the regulation at 8 C.F.R. § 212.2(j) before he departs, as he will be inadmissible upon his departure due to his prior deportation order. The approval of the application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if he fails to depart.

(BIA 2006); *see also Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).

The Director of the Imperial, California Field Office denied the Form I-212, finding the Applicant inadmissible under section 212(a)(9)(C)(i)(II) of the Act (for reentering the United States without being admitted after being deported) and therefore is currently statutorily ineligible to request permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act because he had not remained outside the United States for ten years, as required. On appeal, the Applicant asserts that the Director erred in finding him inadmissible under 212(a)(9)(C) of the Act and we agree.

Inadmissibility under section 212(a)(9)(C) of the Act only pertains to an unlawful reentry or attempted unlawful reentry that occurs after April 1, 1997, the effective date of the provisions contained in section 212(a)(9)(C) of the Act.[2] Here, the record reflects that the Applicant was deported in [redacted] 1995 and reentered the United States without inspection in or around June 1995.

Because the Applicant's unlawful reentry occurred before April 1997, he is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act and does not need to meet the requirements for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act. Thus, we will remand the matter to the Director for the entry of a new decision regarding the Applicant's eligibility for permission to reapply for admission under section 212(a)(9)(A) as a matter 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.

[2] *See* Memo from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. And Stra., U.S. Citizenship and Immigration Serv., to Field Leadership. *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act* (May 6, 2009)(Any unlawful presence accrued prior to April 1, 1997, or any unlawful entry or attempted reentry into the United States prior to April 1, 1997, does not count for purposes of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act).