U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19066127

Date: MAY 09, 2022

Appeal of Mount Laurel, New Jersey Field Office Decision

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

The Applicant, who was previously ordered removed from the United States and reentered without inspection following removal, seeks advance permission to reapply for admission under sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii) and 1182(a)(9)(C)(ii).

The Director of the Mount Laurel, New Jersey Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the Applicant did not establish a favorable exercise of discretion is warranted in his case. On appeal, the Applicant asserts that the Director's decision does not give appropriate weight to all favorable factors in his case and contains a material factual error. The Applicant also submits additional evidence in support of the appeal.

In these proceedings, an applicant has the burden of proving eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This office reviews 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)(i) of the Act provides that a noncitizen who has been ordered removed under section 235(b)(1) of the Act,8 U.S.C. § 1225(b)(1), and who again seeks admission within 5 years of the date of such removal is inadmissible. Section 212(a)(9)(A)(ii) of the Act provides in relevant part that any noncitizen who has been ordered removed under section 240 of the Act or any other provision of the law, and who seeks admission within 10 years of the date of such departure or removal (or within 20 years of such date in the case of a second or subsequent removal) is inadmissible.

Noncitizens who are inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) if prior to the date of the reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission. Approval of an application for permission to reapply 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).

Section 212(a)(9)(C)(i)(II) of the Act provides that any noncitizen who has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible. Pursuant to section 212(a)(9)(C)(ii) of the Act, there is an exception for any noncitizen seeking admission more than 10 years after the date of the noncitizen's last departure from the United States if, prior to the noncitizen's 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 Applicant indicated on the Form I-212 that he is inadmissible under section 212(a)(9)(A) of the Act because he has been removed from the United States two or more times and his last removal was less than 20 years ago. He further indicated that he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act because he entered the United States without being admitted or paroled after having been removed. The Applicant is currently in the United States and seeks conditional permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before he departs.[1]

The Applicant, a citizen of Guatemala, entered the United States without inspection and admission or parole in [redacted] 2010, was apprehended by a border patrol in Arizona, and was subsequently placed in expedited removal proceedings under section 235(b)(1) of the Act. He was removed on [redacted] 2010.

On or about [redacted] 2010, the Applicant reentered the United States without being inspected and admitted or paroled. He was apprehended in Texas and, on [redacted] 2010, he was issued a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, advising him that his prior order of removal was being reinstated pursuant to section 241(a)(5) of the Act.[2] The record indicates that the reinstated removal order was executed and the Applicant was removed to Guatemala on [redacted] 2010.[3]

The Applicant indicates that he reentered the United States without being inspected and admitted or paroled for a third time on February 6, 2011, and he has remained in the United States since that time. In 2014, he married a U.S. citizen who subsequently filed an immigrant visa petition on his behalf. Based on the facts summarized above, the record substantiates that the Applicant is inadmissible under both sections 212(a)(9)(A) and 212(a)(9)(C)(i)(II) of the Act, as he indicated on the Form I-212. However, in denying the petition, the Director solely addressed whether the Applicant established his

[1] The approval of the Form I-212 under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if he failed to depart.

[2] Section 241(a)(5) of the Act permits the Secretary of Homeland Security to reinstate a prior removal order against a noncitizen who illegally reenters the United States after having been removed or having departed voluntarily under an order of removal. An individual is not eligible and may not apply for relief under the Act when it is determined that he or she reentered the United States illegally after having been removed and a prior order of removal is reinstated. Once the reinstated order has been executed and the noncitizen removed, the bar on applying for relief under the Act no longer applies.

[3] As noted by the Applicant on appeal, the Director erroneously observed in the decision that "there is no record" that he departed the United States following the issuance of the reinstated removal order in [redacted] 2010. The Applicant does not currently have an unexecuted reinstated removal order or any other outstanding removal order.

eligibility for a favorable exercise of discretion under section 212(a)(9)(A)(iii). The Director did not address the Applicant's acknowledgement that he is also inadmissible under section 212(a)(9)(C)(i)(II) for reentering the United States, on two occasions, without being admitted or paroled following a prior removal.

Upon *de novo* review, we conclude that the Applicant is statutorily ineligible to seek relief under section 212(a)(9)(C)(ii) of the Act.

As noted, section 212(a)(9)(C)(ii) of the Act provides for an exception to permanent inadmissibility under section 212(a)(9)(C)(i)(II) of the Act. However, 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 from the United States. The instructions to Form I-212, at pages 2 and 3, state that noncitizens who are inadmissible under section 212(a)(9)(C) of the Act are not eligible to file a Form I-212 for relief under section 212(a)(9)(C)(ii) if they are in the United States or if they have not been physically outside the United States for more than 10 years since the date of their last departure.[4]

Here, the record reflects that the Applicant's last departure from the United States was on [redacted] 2010. He reentered without inspection in February 2011 and indicates that he has been residing in the United States since that time. The Applicant does not claim that he has been physically outside the United States for ten years or more since his last departure, and he did not submit any evidence of his physical presence outside the United States for the required ten-year period. He is therefore not statutorily eligible to seek an exception to his inadmissibility under section 212(a)(9)(C)(ii) of the Act.

Although the Director did not address the Applicant's inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, as noted, the Applicant was aware of his inadmissibility under this provision as he indicated on his Form I-212. Further, he does not claim, and the record does not demonstrate, that he can meet the eligibility requirements to file a Form I-212 to seek permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act. Accordingly, no purpose would be served in remanding the matter to the Director. The Applicant is permanently inadmissible under section 212(a)(9)(C)(i)(II) of the Act and will not be eligible to seek consent to reapply for admission unless and until he departs the United States and remains outside the country for at least ten years. His application must be denied for this reason.

We acknowledge the Applicant's claims that the Director did not consider all positive factors presented, including hardships that he and his family would experience if he must depart the United States. However, even if the Director had determined that the Applicant is eligible for an exception to his inadmissibility under section 212(a)(9)(A) of the Act as a matter of discretion, he would remain inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to address the Applicant's appellate arguments regarding his eligibility for permission to reapply for permission under section 212(a)(9)(A)(iii) of the Act. *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"); *see also Matter of*

[4] *See* form instructions at https://www.uscis.gov/sites/default/files/document/forms/i-212instr.pdf; *see also* 8 C.F.R. § 103.2(a)(1), which incorporates the form instructions into the regulations.

L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

For the reasons discussed, the Applicant is permanently inadmissible under section 212(a)(9)(C)(i)(II) of the Act and does not meet the eligibility requirements to file a Form I-212 to seek relief under section 212(a)(9)(C)(ii) of the Act. Accordingly, the application will remain denied.

ORDER: The appeal is dismissed.