U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16613490

Date: MAY 10, 2022

Appeal of Long Island, New York 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 Long Island, New York Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for reentering the United States without being admitted after accruing more than one year of unlawful presence. The Director further concluded that the Applicant did not meet the requirements for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act.[1]

On appeal, the Petitioner contends that he did not accrue one year of unlawful presence beginning on or after April 1, 1997, and that he therefore is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act. He states that he only filed the Form I-212 due to uncertainty over whether he had previously been ordered removed or deported, and asserts that he now believes he is not inadmissible under any section of 212(a)(9) of the Act.[2]

The Applicant bears the burden of proof to demonstrate 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)(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 one year and who enters or attempts to reenter

[1] Additionally, the Director concluded that the Applicant did not merit a favorable exercise of discretion because the favorable factors did not outweigh the unfavorable factors in his case. In making this determination, the Director emphasized that the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act based on his conviction for a crime involving moral turpitude and that his concurrently filed Form I-601, Application to Waive Inadmissibility Grounds, requesting a waiver of this inadmissibility under section 212(h) of the Act, had been denied.

[2] The Director did not find that the Applicant is inadmissible under section 212(a)(9)(A) of the Act for having been previously removed or deported from the United States. The Director observed that the Applicant had been granted voluntary departure in 1986 after entering without inspection and was not placed in deportation proceedings.

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. 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).

III. ANALYSIS

The Applicant indicates that he entered the United States without inspection in November 1996. He asserts that he departed the United States in December 1997, before accruing one year of unlawful presence after April 1, 1997, and that he reentered the United States in November 2011, without being inspected and admitted or paroled.

The Director acknowledged the Applicant's claim that he departed the United States voluntarily in December 1997 but determined that his claim was not supported by corroborating evidence of his departure. The Director emphasized that it is the Applicant's burden to establish that he is admissible to the United States, and that he had not met his burden to establish that he departed the United States prior to accruing one year of unlawful presence. Accordingly, the Director concluded that the Applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. The Director also determined that the Applicant does not meet the requirements for an exception to this inadmissibility pursuant to section 212(a)(9)(C)(ii) of the Act, because he did not remain outside the United States for ten years after the date of his last departure and obtain approval of a Form I-212 prior to returning to the United States.

On appeal, the Applicant asserts that he was advised by USCIS during his adjustment of status interview that he would be given an opportunity to provide additional evidence to corroborate the dates of his departure and absence from the United States, but he was not given such opportunity. He has supplemented the record on appeal, but the newly submitted evidence does not corroborate his claim that he departed the United States in December 1997, as claimed, or that he departed at any point prior to April 1, 1998, such that he did not accrue one year of unlawful presence after April 1, 1997. The documentation includes a copy of a Colombian driver's license issued to the Applicant in June 1998. He has not provided any evidence that pre-dates this document and therefore has not demonstrated that he departed the United States prior to accruing one year of unlawful presence.

The applicant bears the burden of establishing admissibility clearly and beyond doubt. *See Matter of Bett*, 26 I&N Dec. 437, 440 (BIA 2014) ("an applicant has the burden to show that he is clearly and beyond doubt entitled to be admitted to the United States and is not inadmissible under section 212(a) of the Act.") (citations omitted). After reviewing the record, including the supplemental evidence submitted on appeal, we conclude that the Applicant has not met his burden to establish that he is admissible under section 212(a)(9)(C)(i)(II) of the Act.

We also agree with the Director's determination that the Applicant has not established his eligibility to apply for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act. The Form Instructions to Form I-212, at page 5, state: "You cannot file an application for consent to reapply for

admission while you are in the United States if you are inadmissible under INA section 212(a)(9)(C)."[3] Rather, permission to reapply must be sought and obtained prior to an applicant's readmission to the United States, after an applicant has remained physically outside the country for a period of at least 10 years.

For the reasons discussed above, the Applicant has not demonstrated that he is admissible under section 212(a)(9)(C)(i)(I) of the Act, or that he is eligible for the exception to inadmissibility provided by section 212(a)(9)(C)(ii) of the Act. Accordingly, the application will remain denied.

In addition, the record of proceedings reflects that the Applicant was also found inadmissible for a crime involving moral turpitude under section 212(a)(2)(A)(i)(I). The Applicant submitted a Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), seeking a waiver of his inadmissibility under section 212(h) of the Act. The Director denied the application, and in a separate decision, we dismissed an appeal of the denial, finding that the Applicant was not eligible for a waiver because he did not demonstrate that he had been rehabilitated and that his waiver application merited a favorable exercise of discretion.

An application for permission to reapply for admission is properly denied, in the exercise of discretion, to an applicant who is mandatorily inadmissible to the United States under another section of the Act, as no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964). Because the Applicant's waiver application has been denied, he remains inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and his Form I-212 will remain denied as a matter of discretion.

ORDER: The appeal is dismissed.

[3] *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.