U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20150037

Date: MAY. 18, 2022

Appeal of Charlotte, North Carolina 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). U.S. Citizenship and Immigration Services (USCIS) may grant permission to reapply for admission to the United States in the exercise of discretion for those who establish their eligibility.

The Director of the Charlotte, North Carolina Field Office denied the Form I-212, concluding that the Applicant was not eligible to file the Form I-212, since she was not abroad and had not been outside the United States for the required ten years required by section 212(a)(9)(C)(ii). Further, the Director determined that even if the Applicant was eligible to file the Form I-212, she did not demonstrate that the exercise of favorable discretion was warranted.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

Section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than 1 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), 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.

On appeal, the Applicant contends that her situation is different from that addressed in Section 212(a)(9)(C)(i) of the Act, since she was granted asylee status in 2005 through her father. The Applicant contends that she has an approved Form I-601, Waiver of Grounds for Inadmissibility, and that she would face immense and severe harm if she was forced to leave the United States for ten years.

The Applicant indicated in the Form I-212 that she was removed from the United States in [redacted] 1997 and thereafter reentered the United States without inspection sometime in April 1998. As noted

by the Director, the Applicant does not dispute these facts, nor does it question them on appeal. As such, the Applicant is inadmissible under section 212(a)(9)(C)(i) of the Act.

The Director indicated in the denial decision that the Form I-212 instructions state that the form may be filed if a noncitizen is inadmissible under section 212(a)(9)(C) of the Act and they: 1) are not in the United States; or 2) have been physically outside the United States for more than 10 years since the date of their last departure from the United States. Here, the Applicant acknowledges she is in the United States, and there is no indication that she has left since entering without inspection since 1998. For instance, the Applicant states on appeal she cannot leave the United States for ten years and indicates that she should be excused from this requirement, pursuant to section 212(a)(9)(C)(ii), since she was granted asylee status. There is no basis for the Applicant's assertion under any applicable law or policy, and she provides no reference to applicable law or policy on appeal to demonstrate that such an exception to section 212(a)(9)(C) of the Act exists. The Applicant is inadmissible under section 212(a)(9)(C)(i) of the Act, and to apply for readmission she must be abroad for more than ten years and file the Form I-212 from that country.

Therefore, we agree with the Director's conclusion that the Applicant is ineligible to file the Form I-212, and for this reason, the appeal must be dismissed, and the application will remain denied.

ORDER: The appeal is dismissed.