U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20500827

Date: MAY 19, 2022

Appeal of Nebraska Service Center 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 Nebraska Service Center Office denied the application, concluding that the Applicant was 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 then concluded that the Applicant did not meet the requirements for permission to reapply for admission because he has not remained outside the United States for 10 years since his last departure.[1]

On appeal, the Applicant does not submit new evidence but contends that he documented extreme hardship to his spouse and children and requests to join his family in the United States. The Applicant does not contest the Director's finding that he is inadmissible under section 212(a)(9)(C).

We review the questions raised in this matter *de novo*. *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 that any noncitizen, other than an "arriving alien" described in section 212(a)(9)(A)(i), 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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of a noncitizen convicted of an aggravated felony) is inadmissible.

Noncitizens 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) if, prior to the date of their 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 noncitizen's reapplying for admission.

[1] Additionally, the Director concluded that the Applicant did not merit a favorable exercise of discretion because the favorable factors in his case did not outweigh the unfavorable factors.

Section 212(a)(9)(C) 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, 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 10 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.

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 become inadmissible upon his departure due to his prior removal order. 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.

II. ANALYSIS

The issue presented on appeal is whether the Applicant should be granted permission to reapply in the exercise of discretion. The Applicant is statutorily ineligible for permission to reapply for admission to the United States because he has not remained outside the United States for at least 10 years since his last departure.

The record reflects that the Applicant entered the United States with a K-3 visa in 2002 but did not adjust his status to that of a lawful permanent resident. The Applicant remained in the United States unlawfully until departing in January 2010. The Applicant subsequently reentered the country without being admitted in [redacted] 2010 and was apprehended. The Applicant applied for asylum unsuccessfully, and he was ordered removed. The Applicant departed the United States in November 2018. He is thus inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, for entering the United States without being admitted after accruing more than one year of unlawful presence in the United States prior to departure.

As noted, a noncitizen who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the noncitizen has been outside the United States for more than 10 years since 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). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, the Applicant must have departed at least ten years ago and remained outside the United States during that time, and U.S. Citizenship and Immigration Services must have consented to the Applicant's reapplying for admission. None of that has happened. The Applicant has not remained outside the United States for 10 years after his last departure in November 2018. He is thus currently ineligible to apply for the

exception to his inadmissibility under section 212(a)(9)(C) of the Act.[2] The application for permission to reapply for admission must remain denied.

ORDER: The appeal is dismissed.

[2] 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, for having been ordered removed, as she would remain inadmissible under section 212(a)(9)(C) of the Act.