U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17930715

Date: MAY 27, 2022

Appeal of San Francisco, California 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 San Francisco, California Office denied the Form I-212, Application for Permission to Reapply for Admission, concluding that the Applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act, for having reentered the United States without inspection after being ordered removed and not remaining outside of the United States for 10 years as required by the Act. Specifically, the Director determined that the Applicant's claim that she was deported and left in 1994 and reentered the United States without inspection in 1995 and had remained in the United States since was contradicted by the information on her application for temporary protected status (TPS). The Director then concluded that the Applicant did not meet the requirements for permission to reapply for admission because she has not remained outside the United States for 10 years since her last departure. Further, the Director stated 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 providing incorrect information on her TPS application.

The matter is now before us on appeal. The burden of proof in these proceedings rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision.

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, other than an "arriving alien," who has been ordered removed under section 240 of the Act, 8 U.S.C. § 1229a, 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. 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) 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 noncitizen's reapplying for admission.

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 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.

On appeal, the Applicant contends that she is not inadmissible under section 212(a)(9)(C)(i)(II) because she reentered the United States without inspection after being ordered removed in 1995 rather than in 2000. The record reflects that the Applicant, a national and citizen of El Salvador, entered the United States without inspection and admission or parole in or around October 1990, and was placed in removal proceedings. She was ordered removed in [redacted] 1994. The Applicant states that she reentered the United States without inspection in 1995. On appeal, the Applicant submits, among other things, copies of previously submitted immigration forms where she indicated 1995 as the last date of entry; and a letter and print-out of money transfers made from the Applicant to El Salvador between 1993 and 2005.

Based on the evidence submitted on appeal, which includes new information relevant to the Applicant's eligibility for permission to reapply for admission, we will remand the matter to the Director to determine whether the Applicant is inadmissible under section 212(a)(9)(C)(i) of the Act and currently ineligible to seek permission to reapply.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.