U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23214210

Date: NOV. 15, 2022

Appeal of Los Angeles, 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)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii), because he is admissible for entering or attempting to enter the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year.

The Director of the Los Angeles, California Field Office denied the application. The Director concluded that the Applicant did not submit evidence of the Applicant's departure from the United States and a list of entries to and departures from the United States, including the manner of entry and departure, in response to a request for evidence (RFE). Specifically, the Director concluded that U.S. Citizenship and Immigration Services (USCIS) "is unable to process" the benefit request without the requested evidence. On appeal, the Applicant asserts that he submitted the requested evidence.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit 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). The Administrative Appeals Office reviews the questions 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)(C)(i) of the Act provides that a 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.

Pursuant to section 212(a)(9)(C)(ii) of the Act, there is an exception for a 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 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 of the application is warranted as a matter of discretion. *See Matter of Lee,* 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *See Matter of Tin,* 14 I&N Dec. 371 (Reg'l Comm'r 1973); *see also Matter of Lee*, *supra*, at 278 (finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character, and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience").

II. ANALYSIS

The Applicant has been found inadmissible under section 212(a)(9)(C) of the Act for entering or attempting to enter the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year. Specifically, the record establishes that the Applicant entered the United States without inspection in or about 1989; then, in April 1998, an Immigration Judge ordered the Applicant to voluntarily depart. The Applicant asserts on appeal that, despite being ordered to voluntarily depart in 1998, he remained in the United States until he "left on or about May 2009." The Applicant also asserts on appeal that he "attempted to reenter the United States on [redacted] 2009[, but he] was discovered concealed in a vehicle that was driven by someone else." The Applicant further asserts that he was "summarily paroled into the United States as a material witness against the driver. On [redacted], I appeared and was summarily returned to Mexico."

The Applicant accrued unlawful presence in the United States for an aggregate period of more than one year, between 1989 and 1998, when an Immigration Judge ordered him to voluntarily depart. The Applicant continued to accrue unlawful presence in the United States when he remained until approximately May 2009, when he asserts he departed the United States. Additionally, the Applicant entered or attempted to enter the United States without inspection in [redacted] 2009. However, similar to the Director's conclusion, we are unable to determine whether the Applicant continues to be inadmissible under section 212(a)(9)(C) of the Act because the Applicant has not submitted sufficient evidence to enable us to determine the date of his most recent departure from the United States, and whether 10 years have passed since then.[1] Determining the Applicant's most recent actual date—and manner—of departure from the United States is of particular concern in this case, given his history of

[1] The Director specifically stated that the "application is hereby denied due to lack of prosecution, in accordance with 8 C.F.R. § 103.2(b)(11)." However, the regulation at 8 C.F.R. § 103.2(b)(11) does not contemplate denial "due to lack of prosecution." The regulation at 8 C.F.R. § 103.2(b)(11) provides, in relevant part, that "[s]ubmission of only some of the requested evidence will be considered a request for a decision on the record." In contrast, the regulation at 8 C.F.R. § 103.2(b)(13)(i) provides, in relevant part, that "[i]f the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons." In this case, the Applicant responded to the Director's RFE with some of the requested evidence. Nevertheless, at the time of the Applicant's RFE response, which was in effect a request for a decision on the record, the record did not establish eligibility.

entering without inspection, ignoring a voluntary departure order for more than one decade, and attempting to reenter without inspection soon after departing the United States. Section 212(a)(9)(C)(ii) of the Act additionally provides a specific timeline associated with the exception to inadmissibility and ability to seek consent to reapply.

On appeal, the Petitioner submits the following:

- A copy of the Director's decision;
- A one-page statement, dated May 23, 2022, signed by the Applicant;
- A copy of a U.S. Customs and Border Protection (CBP) Form I-275, Withdrawal of Application for Admission/Consular Notification, already in the record;
- A printout of a status message from the MyUSCIS website, regarding the Director's denial of the Applicant's Form I-212;
- A photocopy of two envelopes addressed to the Applicant at an address in Mexico, postmarked in 2010; and
- A series of documents written in a language other than English, without a full English language translation which the translator has certified as complete and accurate.

The documents in the record, including any documents resubmitted on appeal, that are written in a language other than English, without a full English language translation, cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(3) (stating that any document submitted to U.S. Citizenship and Immigration Services (USCIS) "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that [they are] competent to translate from the foreign language into English"). Relatedly, the Director specifically advised the Applicant in the RFE:

> If you submit a document in any language other than English, you must provide: (1) a copy of the original document in its foreign language; and (2) a full English translation of the document. The translator must certify that the translation is complete and accurate, and that he or she is competent to translate from the foreign language to English.

In turn, the Director's decision and the MyUSCIS status update about that decision are immaterial to the date of the Applicant's most recent departure from the United States. Moreover, the Director's decision specifically informs the Applicant that the record does not establish his most recent date and manner of departure from the United States. The two envelopes addressed to the Applicant at an address in Mexico, postmarked in 2010, do not establish the date on which the Applicant departed the United States or whether the Applicant has continually resided and received mail at that address since 2010.

The Form I-275 states that the Applicant "appeared at the [redacted] [CBP] Office" on [redacted], 2009, he withdrew his application for admission, and he "was summarily returned to Mexico." Similarly, the Applicant's one-page statement asserts, in relevant part, "On [redacted] I appeared and was summarily returned to Mexico. . . . On page 3 of the [Form I-275, it] states that I was returned to Mexico and not returned as per my evidence provided." However, neither the Form I-275 nor the

Applicant's statement establish the date on which the Applicant departed the United States or, as the Director specifically requested in the RFE, "the manner of entry/departure." They additionally do not, on their own, sufficiently establish that the Applicant remained in Mexico for 10 years following his departure. Instead, they generally assert that he "returned to Mexico." The record does not establish, by a preponderance of the evidence, the date of the Applicant's most recent departure from the United States, nor whether the Applicant remained in Mexico for 10 years since that date.

We further note that, even if the record established the date of the Applicant's most recent departure from the United States and whether 10 years have passed since that date, the Applicant does not assert either on appeal or in response to the Director's RFE, and the record does not support the conclusion, that the favorable factors in this case outweigh the unfavorable factors. *See Matter of Lee,* 17 I&N Dec. at 278-79.

III. CONCLUSION

The Applicant has the burden of proof in seeking permission to reapply for admission. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Specifically, the record does not establish the date of the Applicant's most recent departure from the United States and whether 10 years have passed since that date.

ORDER: The appeal is dismissed.