U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23349468

Date: NOV. 30, 2022

Motion on Administrative Appeals Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant seeks conditional 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 inadmissible for entering 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 Las Vegas, Nevada Field Office denied the application. The Director concluded that the Applicant had not shown that he is statutorily eligible for the relief sought, or that a favorable exercise of discretion is warranted. We dismissed the Applicant's appeal because he did not demonstrate he was statutorily eligible to apply for permission to reapply for admission since he had not spent ten years outside the United States prior to filing his Form I-212 as required by section 212(a)(9)(C)(ii) of the Act. The matter is now before us on a motion to reconsider.

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 review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

Section 212(a)(9)(C)(i) of the Act provides that an alien 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 the United States without being admitted is inadmissible." Under section 212(a)(9)(C)(ii) of the Act, there is an exception for any "alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien'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 alien's reapplying for admission."

II. ANALYSIS

The Applicant entered the United States unlawfully (without parole, inspection, or admission) in February 2004. In December 2009, after nearly six years of unlawful presence, the Applicant departed the United States without first obtaining advance parole or any other means of lawful re-entry. In [redacted] 2010, he made two attempts to reenter the United States unlawfully. On the first attempt, he was apprehended by officers of U.S. Customs and Border Protection (CBP) and returned to Mexico. His second attempt at unlawful entry was successful, and the Applicant has remained in the United States since late [redacted] 2010.

Following an arrest in 2014 for driving under the influence of alcohol, U.S. Immigration and Customs Enforcement (ICE) began removal proceedings against the Applicant. He was released on bond in [redacted] 2014, and was ordered removed in [redacted] 2016. In August 2017, his U.S. citizen spouse filed an immigrant relative petition on his behalf.

The Applicant does not dispute the above timeline of events, nor does he provide new facts to establish he is not subject to section 212(a)(9)(C)(i) of the Act. As stated above, section 212(a)(9)(C)(i) requires him to reside outside of the United States for ten years prior to being statutorily eligible to file for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act. While we acknowledge the Applicant's arguments on motion, he has not demonstrated that we erred in finding him inadmissible under section 212(a)(9)(C)(i) of the Act, or in determining that he remains statutorily ineligible to file a waiver under section 212(a)(9)(C)(ii) of the Act.

III. CONCLUSION

The documentation on motion does not establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. §103.5(a)(3). Therefore, the motion to reconsider will be dismissed.

ORDER: The motion to reconsider is dismissed.