U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21862132

Date: OCT. 12, 2022

Appeal of Nebraska Service Center Decision

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

The Applicant submitted Form I-212, Application for Permission to Reapply for Admission, indicating that he is inadmissible under section 212(a)(9)(A)(i) of the Act for having been removed as an arriving alien. The Director of the Nebraska Service Center denied the Form I-212 and the matter is before us on appeal. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 C.F.R. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(i) of the Act states that any noncitizen who has been previously ordered removed as an arriving alien, and who seeks admission again within five years of the date of that removal (or within 20 years in the case of a second or subsequent removal) is inadmissible. Noncitizens who reentered or attempted to reenter the United States without admission after being ordered deported, excluded, or removed generally cannot gain admission to the country. Section 212(a)(9)(C)(i)(II) of the Act. An exception exists, however, if these noncitizens seek admissions more than 10 years after their last departures from the country and, prior to their returns, U.S. Citizenship and Immigration Services (USCIS) consents to their reapplications for admission. Section 212(a)(9)(C)(ii) of the Act. The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

In denying the Form I-212, the Director determined that a search of USCIS and U.S. Department of State records did not reveal that the Applicant had applied for a visa, admission to the United States, or adjustment of status, or that he had been interviewed and found inadmissible by a Department of State consular officer for a ground that requires filing of Form I-212. On appeal, the Applicant maintains that he is seeking conditional approval of the Form I-212, pursuant to 8 C.F.R. § 212.2(j), in anticipation of triggering inadmissibility under Section 212(a)(9)(A) of the Act when he departs, and that he has an approved Form I-130, Petition for Alien Relative, with a pending Form I-601A, Application for Provisional Unlawful Presence Waiver for inadmissibility under section 212(a)(9)(B) of the Act[1] upon his departure from the United States for consular processing. The Applicant argues

[1] Section 212(a)(9)(B) of the Act addresses inadmissibility for the accrual of unlawful presence in the United States.

that the Form I-212 should not be denied for possible other grounds of inadmissibility as that finding is reserved for a consular officer.

We issued a notice of intent to dismiss (NOID) in which we indicated that the record shows that on [redacted] 2008, the Applicant attempted to enter the United States by presenting a Form I-551, Permanent Resident Card not lawfully issued to him, was found inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act, and was expeditiously removed pursuant to section 235(b)(1) of the Act. On [redacted] 2008, the Applicant was apprehended attempting to enter the United States without inspection and was expeditiously removed on [redacted] 2008. On [redacted] 2008, the Applicant was apprehended after entering the United States without inspection and issued a Form I-871, Notice of Intent/Decision to Reinstate Prior Order indicating that he had been removed, illegally reentered the United States, and was again removed. He subsequently reentered the United States on an unknown date and currently resides here.

Through the NOID, we informed the Applicant that the record indicates he is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for entering the United States without being admitted after having been ordered removed. A noncitizen inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless they have remained outside the United States for more than 10 years since the date of their last departure from the United States. *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). We explained that to overcome this inadmissibility an applicant must have departed the United States at least 10 years ago and remained outside the United States, and USCIS must then consent to the applicant reapplying for admission. We noted that because the Applicant is in the United States, he is ineligible to apply for the exception to inadmissibility under section 212(a)(9)(C)(ii) of the Act until he departs and remains outside the United States for 10 years.

In response to our NOID the Applicant again maintains that he has an approved Form I-130 and a pending Form I-601A and that he seeks a conditional approval of Form I-212 in anticipation of triggering inadmissibility under 212(a)(9)(A) of the Act when departs the United States for a consular interview. He contends that a Form I-601 provisional waiver is for inadmissibility under 212(a)(9)(B) of the Act, which he will trigger upon his departure from the United States, and that the Form I-212 must be granted before USCIS will consider the Form I-601A. The Applicant reasserts that the Form I-212 should not be denied for possible other grounds of inadmissibility that are reserved for a consular officer to determine.

An application for permission to reapply for admission is denied, in the exercise of discretion, to a noncitizen who is mandatorily inadmissible to the United States under another section of the Act. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964). Evidence that the Applicant's departure will trigger inadmissibility under a separate ground for which no waiver is available is relevant to determining whether a Form I-212 should be granted as a matter of discretion, as no purpose would be served in granting the application under these circumstances. *Id.*

The Applicant does not present evidence or argument that he is not inadmissible under section 212(a)(9)(C)(ii) of the Act, nor does he claim that he has spent 10 years outside of the United States since his last departure. As the Applicant currently resides in the United States and has not remained

outside the United States for 10 years since his last departure, he is statutorily ineligible to apply for permission to reapply for admission. As such, we will not address whether the Applicant merits permission to reapply under section 212(a)(9)(A)(iii) of the Act as matter of discretion, as granting this relief would not result in the Applicant's admissibility to the United States. Accordingly, the Form I-212 remains denied.

ORDER: The appeal is dismissed.