U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18984667

Date: SEPTEMBER 6, 2022

Appeal of Los Angeles, California Field Office Decision

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

The Applicant, a citizen of Mexico currently residing in the United States, seeks advance 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 Los Angeles, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the Applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act for entering the United States without being admitted after having previously been ordered removed. The Director then determined 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. The Applicant filed an appeal of that decision with this office. 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 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)(II) of the Act provides that any noncitizen who 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. In these proceedings, the Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The issue presented on appeal is whether the Applicant is eligible to obtain permission to reapply for admission to the United States.

The record reflects that in [redacted] 1999, the Applicant was expeditiously removed pursuant to section 235(b)(1) of the Act after attempting to enter the United States without inspection. In October 1999, he reentered the United States without inspection. The record therefore establishes that the Applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act for entering the United States without being admitted after having been ordered removed.

On appeal, the Applicant contends that consent to reapply for admission after removal under 8 C.F.R. § 212.2 is only required when an individual's removal or departure is at the "government's expense." Citing Pereira v. Sessions, 138 S. Ct. 2105 (2018), in which the Supreme Court reiterates the principle that statutory interpretation begins with looking at the plain language of a statute,[1] he argues that because he was stopped by immigration officials at the border and returned to Mexico by foot, he was not removed at the government's expense and does not need to apply for permission to reapply for admission

Contrary to the Applicant's contention, 8 C.F.R. § 212.2 provides guidance on consent to reapply for admission "after deportation, removal or [emphasis added] departure at [g]overnment expense." As such, consent to reapply for admission after removal is required for noncitizens previously subject to expedited removal under section 235(b)(1) of the Act, to those removed under section 240, and to those previously removed under any other provision of the law, and the consequences of reentry without admission following a prior removal order are the same regardless of which provision of the Act served as the basis for removal.

The Applicant also contends that section 212(a)(9)(C)(ii) of the Act does not require that the period of inadmissibility be served outside the United States. He asserts that he may seek consent to reapply for admission because 10 years have elapsed since his 1999 departure. However, a noncitizen who is inadmissible under section 212(a)(9)(C)(i)(II) of the Act may not seek permission to reapply unless they have been outside the United States for more than 10 years since the date of their last departure from the United States. Matter of Torres-Garcia, 23 I&N Dec. 866, 873 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, it must be the case that the noncitizen's last departure was at least 10 years ago, they have remained outside the United States, and USCIS has granted them permission to reapply for admission into the United States. Id.

[1] In Pereira, the Supreme Court held that a notice to appear that fails to designate the specific time or place of a noncitizen's removal proceedings is not a notice to appear under section 1229(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), and so does not trigger the Act's stop-time rule ending the noncitizen's period of continuous presence in the United States.

In this case, the Applicant's last departure from the United States occurred in [redacted] 1999, and he returned to the United States at a later unknown date; he indicated on his Form I-212 that he last reentered the United States in October 1999. As the Applicant currently resides in the United States, he has not remained outside the United States for 10 years since his last departure. He is therefore 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.