



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 19581109

Date: SEP. 06, 2022

Appeal of Harlingen, Texas 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, 8 U.S.C. § 1182(a)(9)(A)(iii).

The Director of the Harlingen, Texas Field Office denied the application. The Director determined that the Applicant was inadmissible pursuant to section 212(a)(9)(A)(ii) and (a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and (9)(C)(i)(II), for having been previously removed and again seeking admission within five years of the date of the removal and for having entered the United States without being admitted after having been ordered removed. The Director concluded that since the Applicant had not remained outside the United States for 10 years since her last departure pursuant to section 212(a)(9)(C)(iii) of the Act, the application must be denied.

On appeal, the Applicant highlights that she filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, under the Violence Against Women Act (VAWA), which was approved in February 2015. She contends the Director erred in not acknowledging that she is a VAWA self-petitioner or that U.S. Citizenship and Immigration Services (USCIS) “has specific authority to grant a *nunc pro tunc* I-212 waiver to a VAWA self-petitioner.”

The Applicant bears the burden of proof in these proceedings 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). We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for additional review and the entry of a new decision.

**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 any 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's] reapplying for admission.”

Inadmissibility pursuant to section 212(a)(9)(C)(i) of the Act may also be waived as a matter of discretion, in the case of a noncitizen who is a VAWA self-petitioner, if there is a connection between the noncitizen's battering or subjection to extreme cruelty and his or her removal, departure from the United States, reentry or reentries into the United States, or attempted reentry into the United States. Section 212(a)(9)(C)(iii) of the Act.

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen 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.

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. *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. *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 record reflects that the Applicant entered the United States without inspection in 1990, was granted voluntary departure in 1993, and given until [ ] 1994, to depart the United States. The Applicant did not depart by this assigned date and her voluntary departure was modified to a final order of removal. The Applicant indicated she departed the United States in approximately November 1994, but later reentered the United States without inspection in June 1995 and May 1998, and remained in the United States for short periods, each time returning to Mexico. Subsequently, the Applicant again reentered the United States without inspection in May 2000 and has remained in the country since that time. In September 2005, the Applicant's legal permanent resident spouse filed a Form I-130, Petition for an Alien Relative, on her behalf that was approved, but this visa petition was later administratively closed in 2011. Thereafter, the Applicant separated from her spouse and filed a VAWA petition based on her spouse's abuse, and this petition was approved in February 2015. The

Director determined, and the Applicant acknowledges, that she is inadmissible under sections 212(a)(9)(A)(ii) and (a)(9)(C)(i)(II) of the Act.

A. Inadmissibility under Section 212(a)(9)(C)(i)(II) of the Act

Section 212(a)(9)(C)(iii) of the Act waives inadmissibility under section 212(a)(9)(C)(i)(II) of the Act if a VAWA self-petitioner demonstrates a connection between battery or extreme cruelty forming the basis for the VAWA claim and their departure and reentry into the United States. Relevant form instructions indicate that if an applicant seeks a waiver of inadmissibility under section 212(a)(9)(C) of the Act as a VAWA self-petitioner, this must be requested using the Form I-601, Application for Waiver of Grounds of Inadmissibility. *See* Form I-212, Instructions for Application for Permission to Re-apply for Admission Into the United States After Deportation or Removal, at 4 (3/21/22 ed.); Form I-601, Instructions for Application for Waiver of Grounds of Inadmissibility, at 15 (1/27/20 ed.). As highlighted by the Applicant on appeal, she filed a Form I-601 on this basis in July 2016, which was denied and subsequently appealed. In a separate proceeding on her Form I-601 appeal, we withdrew the Director's decision and remanded for the entry of new decision. Accordingly, we need not further address the Applicant's inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, or eligibility for a waiver under section 212(a)(9)(C)(iii) of the Act, here.

B. Inadmissibility under Section 212(a)(9)(A)(ii) of the Act

As stated above, the Applicant acknowledges her inadmissibility under section 212(a)(9)(A)(ii) of the Act and contends the Director erred in not acknowledging that she is a VAWA self-petitioner or that U.S. Citizenship and Immigration Services (USCIS) "has specific authority to grant a *nunc pro tunc* I-212 waiver to a VAWA self-petitioner."<sup>1</sup> The Director's decision does not reflect consideration of the Applicant's status as a VAWA self-petitioner or otherwise address her eligibility for a *nunc pro tunc* approval of the instant application. Accordingly, we remand the matter to the Director for the issuance of a new decision.

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

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<sup>1</sup> Board of Immigration Appeals precedent allows *nunc pro tunc* approval of a Form I-212 in limited circumstances where a grant of permission to reapply for admission would eliminate the only ground of inadmissibility and thereby effect a complete disposition of the case. *Matter of Garcia-Linares*, 21 I&N Dec. 254 (BIA 1996); *Matter of Roman*, 19 I&N Dec. 855 (BIA 1988); *Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976).