U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21943007

Date: DEC. 11, 2023

Appeal of Washington Field Office Decision

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

The Applicant, who is currently in the United States, seeks permission to reapply for admission under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), after having been previously ordered removed.

The Director of the Washington Field Office in Fairfax, Virginia 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 and ineligible to seek permission to reapply for admission because he has not yet departed from the United States and has not remained abroad for 10 years, as required in section 212(a)(9)(C)(ii) of the Act.[1] The matter is now before us on appeal.

On appeal, the Applicant does not identify any factual or legal errors in the Director's denial of his Form I-212. Rather, he states that the Director improperly denied his Form I-485 without considering the substance of his request for permission to reapply for admission. He asserts that the denial of the Form I-485 should therefore be reconsidered, and his Form I-212 should be adjudicated on the merits.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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.

As a preliminary matter, we lack authority to review the denial of the Applicant's Form I-485, which he filed pursuant to section 245(a) of the Act, § 8 U.S.C. 1255(a).[2] Furthermore, regardless of the decision on the Form I-485, the record supports a conclusion that the Applicant is inadmissible to the United States under section 212(a)(9)(C) of the Act, and currently ineligible to seek an exception to this inadmissibility. Consequently, he is barred from admission to the United States, and we need not

[1] In a separate decision the Director denied the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), concluding that the Applicant was in removal proceedings and U.S. Citizenship and Immigration Services (USCIS), was without jurisdiction to adjust his status to that of a lawful permanent resident.

[2] *See* The Administrative Appeals Office (AAO), Jurisdiction and Types of Cases, https://www.uscis.gov/about-us/organization/directorates-and-program-offices/the-administrative-appeals-office-aao.

evaluate the merits of his request for permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act.

Section 212(a)(9)(A)(ii) of the Act provides that a noncitizen who has been ordered deported or removed[3] 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, is inadmissible. A noncitizen who is inadmissible under section 212(a)(9)(A)(ii) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act at any time if prior to the date of the reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous 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, in turn, provides that a noncitizen who has been ordered deported or removed, and who enters or attempts to reenter the United States without being admitted is inadmissible. There is an exception to this inadmissibility if a noncitizen is seeking admission more than 10 years after the date of their last departure from the United States and the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission. Section 212(a)(9)(C)(ii) of the Act.

The record reflects that the Applicant was deported from the United States in [redacted] 1996 pursuant to an order of deportation entered against him. He subsequently entered the United States without inspection and admission or parole in October 2000. The Applicant was apprehended by U.S. Border Patrol agents shortly thereafter and placed in removal proceedings. In [redacted] 2001 an Immigration Judge ordered him removed to El Salvador. The Applicant remained in the United States and was later granted Temporary Protected Status (TPS).[4] He is now seeking permission to reapply for admission so he can adjust his status to that of a lawful permanent resident in the United States as the spouse of a U.S. citizen.

The Director determined that the Applicant is inadmissible under section 212(a)(9)(C) of the Act, because he was deported in 1996 and subsequently entered the United States without being admitted in 2000. The Applicant does not contest this determination on appeal.

As stated, noncitizens who are inadmissible under section 212(a)(9)(C) of the Act may not seek permission to reapply for admission until they have remained outside of the United States for at least 10 years from the date of their last departure. *Matter of Torres-Garcia*, 23 I&N Dec. 866, 873 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355, 365 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). The Applicant does not claim that he meets this threshold requirement.

Consequently, as the Applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and barred from admission to the United States, we will dismiss his appeal of the Form I-212 denial as a matter of discretion. *See Matter of Martinez-Torres*, 10 I&N Dec. 776, 776-77 (Reg'l Comm'r 1964) (stating that denial of an application for permission to reapply for admission is proper, as a matter of

[3] The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996), which took effect on April 1, 1997, eliminated the distinction between deportation and exclusion proceedings by merging them into removal proceedings for all noncitizens regardless of whether they were charged as being inadmissible or deportable from the United States.

[4] A TPS recipient who is maintaining such status may not be removed from the United States. 8 C.F.R. § 244.10(f)(2)(i).

administrative discretion, where a noncitizen is mandatorily inadmissible to the United States under another section of the Act); *see also I.N.S. v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

ORDER: The appeal is dismissed.