U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24562699

Date: FEB. 14, 2023

Appeal of Baltimore, Maryland 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 Baltimore, Maryland Field Office denied the Form I-212, Application for Permission to Reapply for Admission, 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 matter is now before us on appeal. 8 C.F.R. § 103.3.

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.

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 ten 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.

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 1995, the Applicant entered the United States without being inspected, admitted, or paroled. In [redacted] 1997, he was placed in removal proceedings, and an Immigration Judge granted him voluntary departure. The voluntary departure order became a removal order when the Applicant failed to timely depart. In [redacted] 2009, he departed the United States and then reentered the United States without inspection in June 2009. On [redacted] 2009, he was apprehended by immigration officials and his prior removal order was reinstated. In [redacted] 2009, he was removed from the United States, and in November 2009, he reentered the United States without inspection. In 2012, he was granted Temporary Protected Status (TPS) and obtained an advance parole document pursuant to the TPS provisions of section 244(f)(3) of the Act, 8 U.S.C. § 1254a(f)(3), and corresponding regulations at 8 C.F.R. § 244.15(a). In 2012 and 2022, he traveled abroad and returned to the United States with advance parole.

Because the Applicant entered the United States in June 2009 and November 2009 without being admitted after having been ordered removed, he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. A noncitizen who is inadmissible under section 212(a)(9)(C)(i) 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).

On appeal, citing Matter of Arrabally and Yerrabelly, 25 I&N Dec. 771 (BIA 2012), the Applicant asserts that because he has TPS status and last entered the United States pursuant to advance parole, he is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

In Matter of Arrabally, the Board of Immigration Appeals, held that an applicant for adjustment of status who left the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act did not make a departure from the United States with respect to unlawful presence under section 212(a)(9)(B)(i)(II) of the Act. Contrary to the Applicant's assertion, the holding in Matter of Arrabally is not applicable to his case because he reentered the United States, in June and November of 2009, without being inspected, admitted, or paroled, and not pursuant to advance parole.

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.

In this case, the Applicant's last departure occurred in 2009 and he did not remain outside the United States for 10 years since that departure; he unlawfully entered the United States in the same year. 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.