U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24114505

Date: FEB. 15, 2023

Appeal of San Bernardino, California Field Office Decision

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

The Applicant, a native and citizen of Mexico, seeks permission to reapply for admission to the United States under section 212(a)(9)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii).

The Director of the San Bernardino, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission to the United States After Deportation or Removal, concluding that the Applicant did not establish eligibility for consent to reapply. The matter is now before us on appeal. The Applicant argues the Director erred in finding she was inadmissible under section 212(a)(9)(C)(i) of the Act. 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.

Section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than one year, or has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted, is inadmissible. An exception is available where a noncitizen is seeking admission more than 10 years after their last departure from the United States, if prior to reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General has consented to the noncitizen reapplying for admission. 8 U.S.C. § 1182(a)(9)(C)(ii).

The record indicates the Applicant was removed from the United States pursuant to an order of exclusion on [redacted] 1996. She reentered the United States in or about February 1998 without being inspected and admitted or paroled and has remained in the United States since that date. The Applicant argues she is not inadmissible under section 212(a)(9)(C) of the Act because she accrued one year of unlawful presence in the United States and departed the United States prior to April 1, 1997, and thus the permanent bar does not apply. [1] She further argues she is not inadmissible under

[1] The Applicant was not found to be inadmissible under section 212(a)(9)(C)(i)(II) of the Act for an accrual of unlawful presence.

section 212(a)(9)(C)(i) of the Act because she was ordered excluded, and section 212(a)(9)(C) only applied to individuals in removal proceedings.

Upon reentering the United States without admission after having been ordered excluded, the Applicant became inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Despite the Applicant's claim that the permanent bar under this section only applies to individuals placed in removal proceedings, section 212(a)(9)(C)(i)(II) of the Act applies to noncitizens who have "been ordered removed under section 235(b)(1), section 240, or any other provision of the law." Here, the Applicant's order of exclusion constitutes an order of removal under "any other provision of the law" for the purposes of section 212(a)(9)(C)(i)(II). *See* Form I-212 Instructions, at 6 ("Removal under any provision of U.S. law includes, but is not limited to: 1. An exclusion and deportation order under INA section 236 as it existed prior to April 1, 1997 [. . .].").[2] Thus, due to her one reentry into the United States without admission or parole in February 1998 after having been ordered excluded, the Applicant was correctly found to be inadmissible under section 212(a)(9)(C)(i)(II).

Further, the Director correctly concluded the Applicant does not meet the requirements for consent to reapply for admission. Consent to reapply under section 212(a)(9)(C)(ii) can only be granted where an applicant left the United States, is currently abroad, and they are seeking admission to the United States at least 10 years after the date of their last departure. *See Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The Applicant is not seeking the Director's consent to reapply from outside the United States; rather, she is present in the United States and has been since entering without being inspected or admitted in February 1998. Thus, she has not been outside the United States for the requisite 10-year period prior to seeking consent to reapply for admission. As such, the Director did not err in denying the Applicant's Form I-212. The Applicant is currently ineligible to seek permission to reapply for admission, and that application remains denied.

ORDER: The appeal is dismissed.

[2] *See* Form I-212 Instructions, at https://www.uscis.gov/sites/default/files/document/forms/i-212instr.pdf; *see also* 8 C.F.R. § 103.2(a)(1) (incorporating the form instructions into the regulations).