U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23548240

Date: JAN. 3, 2023

Appeal of Harlingen, Texas Field Office Decision

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

The Applicant, a citizen of Guatemala, 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 Harlingen, Texas Field Office denied the application, concluding that because the Applicant had not remained outside the United States for 10 years since his last departure, the application must be denied. On appeal, the Applicant contends that he should be granted permission to reapply for admission in the exercise of discretion.

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 provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than 1 year, or 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.

The record establishes that the Applicant first entered the United States without authorization in December 2003 and remained until May or June 2005, at which time he voluntarily returned to Guatemala. He reentered the United States in July or August 2007 without authorization. The Applicant voluntarily returned to Guatemala in November 2009 and remained there until his attempted reentry without admission in [redacted] 2014. At this entry, border officials apprehended him, and on [redacted] 2014, he was removed from the United States under expedited removal.

On appeal, the Applicant submits a statement explaining that he believed his bar to admissibility ended five years after the date of his removal on [redacted] 2014. He argues that because he was subject to expedited removal procedures and became inadmissible under section 212(a)(9)(A)(i) of the Act as an "arriving alien," his bar was for five years.[1] However, the period of time during which an individual is barred from returning depends upon the grounds of removal and other factors. Here, because the Applicant spent more than one year in unlawful status prior to his [redacted] 2014 removal, he is inadmissible under 212(a)(9)(C) and is, therefore, required to spend more than ten years outside the United States prior to seeking permission to reapply for admission. Section 212(a)(9)(C)(ii) of the Act. Since it appears the Applicant has been outside the United States since [redacted] 2014, he may apply for permission to reapply for admission when he has spent more than ten years outside the United States from that date.[2]

Because the Applicant has not remained outside the United States for more than 10 years after his last departure in [redacted] 2014, he is not currently eligible to apply for the exception to his inadmissibility under section 212(a)(9)(C) of the Act. The application for permission to reapply for admission must remain denied.

ORDER: The appeal is dismissed.

[1] Section 212(a)(9)(A)(i) of the Act provides that a noncitizen who has been ordered removed under section 1225(b)(1) or at the end of proceedings under section 1229a initiated upon the noncitizen's arrival in the United States, and who seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

[2] Any future attempt to reenter the United States without authorization will trigger an additional bar of inadmissibility, and may delay when he may seek permission to reapply.