U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23997306

Date: JAN. 24, 2023

Motion on Administrative Appeals Office Decision

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

The Applicant, a native and citizen of Mexico currently residing in the United States, was found inadmissible for entering the United States without being admitted after having been ordered removed from the United States. Immigration and Nationality Act (the Act) section 212(a)(9)(C)(i)(II), 8 U.S.C. § 1182(a)(9)(C)(i)(II). She seeks permission to reapply for admission into the United States, which in an exception to this inadmissibility. U.S. Citizenship and Immigration Services may grant this exception in the exercise of discretion to applicants who seek admission after remaining abroad for 10 years following their last departure from the United States. Section 212(a)(9)(C)(ii) of the Act.

The Director of the Los Angeles, California Field Office denied the application, concluding that the Applicant was ineligible for an exception to her inadmissibility because record did not establish that she had remained outside the United States for 10 years after her last departure, as required. The Applicant appealed the decision, stating that she was not inadmissible under section 212(a)(9)(C)(i)(II) of the Act because shortly after she was removed on [redacted] 1999, she reentered the United States with inspection at a port of entry and has not departed the United States since then.

However, we found that the Applicant was apprehended twice after her removal for attempting to enter the United States without inspection. This rendered her inadmissible under section 212(a)(9)(C)(i)(II) of the Act regardless of whether she reentered with inspection at some other time. Since she had not been outside the United States for 10 years as required, the Applicant remained ineligible for relief, and we dismissed the appeal. The matter is now before us on a combined motion to reopen and reconsider.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4). 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). Upon review, we will dismiss the motions.

Section 212(a)(9)(C)(i)(II) of the Act provides that a noncitizen who has been ordered removed and then enters or attempts to enter the United States without admission is inadmissible. Under section 212(a)(9)(C)(ii) of the Act, a noncitizen may apply for an exception to this inadmissibility if they have remained outside the United States for at least 10 years since their last departure.

The Applicant first entered the United States without inspection in 1988. On [redacted] 1999, after a brief visit to Mexico, she was apprehended and expeditiously removed while trying to enter the United States without inspection. USCIS records indicate that after this removal, the Applicant was apprehended twice for trying to enter the United States without inspection: once on [redacted] 1999, and once while using a false name and date of birth on [redacted] 2000.[1] Because she attempted to enter the United States without inspection after being ordered removed, the Director found, and we affirmed, that the Applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

Additionally, the record indicates that the Applicant reentered the United States at an unknown time and place shortly after her last apprehension. She has resided in the United States since that time. We therefore also affirmed that the Applicant is ineligible to apply for an exception to her inadmissibility under section 212(a)(9)(C)(ii) of the Act because she has not remained outside the United States for at least 10 years since her last departure. *Matter of Torres-Garcia*, 23 I&N Dec. 866, 873 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355, 366 (BIA 2007).

On motion, the Applicant submits an attorney letter stating that while she does not recall the exact date of her last entry into the United States, she has never used any name or date of birth other than her own. She also states that the information in our prior decision regarding her past immigration encounters was new to her, and requests that we hold the case in abeyance for an unspecified period of time so she can gather more evidence regarding her immigration history and hardship considerations.[2] While a late-filed motion to reopen may be excused at the discretion of USCIS where the filer demonstrates that the delay was reasonable and beyond their control, there is no provision of law authorizing us to hold a motion in abeyance pending the submission of additional evidence. 8 C.F.R. § 103.2(a)(i). We will therefore adjudicate this matter based on the materials submitted with the motion.

The facts asserted on motion do not overcome the finding of inadmissibility. While the Applicant disputes attempting to enter the United States under a false name and date of birth, she does not address her apprehension on [redacted] 1999, apart from stating that it is new information to her. This does not establish any error in our prior decision, and the Applicant therefore remains inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

Because the Applicant has not provided new facts which overcome our prior decision, she does not meet the requirements of a motion to reopen. 8 C.F.R. § 103.5(a)(2). Furthermore, the letter does not name any law or policy that was incorrectly applied in our last decision, and so does not meet the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(3). The motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

[1] On both of these occasions, the Applicant was granted a voluntary return to Mexico.

[2] The Applicant also requests a copy of her file. The Applicant may obtain a copy of the record by filing a Freedom of Information Act request. *Request Records Through the Freedom of Information Act or Privacy Act*, https://www.uscis.gov/records/request-records-through-the-freedom-of-information-act-or-privacy-act.

Beyond our prior decision, we note that the Applicant will remain inadmissible to the United States regardless of the circumstances of her entry into the United States after her removal. Section 212(a)(9)(C)(i)(I) of the Act provides that a noncitizen who has been unlawfully present in the United States for more than one year, and who subsequently enters or attempts to enter the United States without being admitted, is inadmissible. Under section 212(a)(9)(C)(ii) of the Act, a noncitizen may apply for an exception to this inadmissibility if they have remained outside the United States for at least 10 years since their last departure.

The Applicant was unlawfully present in the United States from 1988 to 1999 because she was present without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act. The record indicates, and the Applicant does not dispute, that she was apprehended while attempting to enter the United States without inspection on [redacted], 1999. According to the Form I-213, Record of Deportable/Inadmissible Alien, that was filled out at the time of this apprehension, the Applicant stated to an officer of the former Immigration and Nationality Service that she had been residing in the United States for approximately ten years at that time. Therefore, the Applicant attempted to enter the United States without inspection after accruing over a year of unlawful presence and is inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

As with the Applicant's other ground of inadmissibility, she is ineligible for an exception under section 212(a)(i)(C)(ii) of the Act because she has not remained outside the United States for at least 10 years since her last departure. In any future filings in this matter, the Applicant should address this ground of inadmissibility.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.