U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26903139

Date: JUNE 27, 2023

Appeal of New York City, New York Field Office Decision

Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal

The Applicant, who was previously removed from the United States on two separate occasions as an "arriving alien" has requested to adjust her status to that of a lawful permanent resident (LPR) and is seeking 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 New York City, New York Field Office denied the Form I-212, concluding that the Applicant was inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act and ineligible to seek an exception to this inadmissibility under section 212(a)(9)(C)(ii) of the Act, because she has not yet left the United States and has not remained abroad for at least 10 years, as required under that section. The Director also dismissed a subsequent motion to reopen and reconsider the adverse decision, finding in part that the Applicant did not present sufficient evidence to show that she was inspected and admitted or paroled into the United States after removal, and that a grant of permission to reapply for admission would not be otherwise warranted as a matter of discretion in view of her repeated attempts to enter the United States under false identity and her longtime unlawful residence in the country.[1] The matter is now before us on appeal.

On appeal, the Applicant resubmits previously provided evidence and asserts that the Director erred by finding her permanently inadmissible under section 212(a)(9)(C)(i)(II) of the Act. She further states that she merits a favorable exercise of discretion because she is a beneficiary of an approved visa petition, has no criminal history, and her four minor U.S. citizen children will suffer hardship if her request for permission to reapply for admission is denied.

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.

[1] In separate decisions the Director denied the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, and Form I-601, Application for Waiver of Grounds of Inadmissibility. Thus the Applicant remains inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

I. LAW

Section 212(a)(9)(A)(i) of the Act provides in pertinent part that any noncitizen who has been ordered removed from the United States as an "arriving alien," and who again seeks admission within 5 years of such removal (or within 20 years 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. A noncitizen who is inadmissible under that section of the Act may seek permission to reapply for admission if prior to the date of the noncitizen's 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)(A)(iii) of the Act.

Section 212(a)(9)(C)(i)(II) of the Act, in turn, provides in pertinent part that a noncitizen who has been ordered removed under section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1), or any other provision of law and who subsequently enters or attempts to reenter the United States without being admitted is inadmissible. An exception to this inadmissibility is available, but only if the 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 that noncitizen reapplying for admission. Section 212(a)(9)(C)(ii) of the Act.

II. ANALYSIS

The issues on appeal are: (1) whether the Applicant has demonstrated that she is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and if so, (2) whether approval of her request for permission to reapply for admission is otherwise warranted in the exercise of discretion. We have reviewed the entire record, as supplemented on appeal, and for the reasons explained below conclude that the Applicant has not overcome the Director's inadmissibility finding. Because this inadmissibility is dispositive of the Applicant's appeal, we need not determine at this time whether a grant of the Applicant's request for permission to reapply for admission to cure her inadmissibility under section 212(a)(9)(A)(i) of the Act would be warranted as a matter of discretion, as it would not change the outcome.[2]

The record reflects that the Applicant initially sought admission to the United States in [redacted] 1997 with a photo-substituted Dominican passport issued to someone else. She was determined to be inadmissible, in part, under section 212(a)(6)(C)(i) of the Act – for fraud or misrepresentation – and expeditiously removed from the United States pursuant to section 235(b)(1) of the Act. In [redacted] 1997, she again applied for admission to the United States using another photo-substituted passport, and again was expeditiously removed from the United States upon determination of inadmissibility for fraud or misrepresentation. In 2017, the Applicant requested to adjust her status to that of an LPR spouse of a U.S. citizen, representing that she was last admitted to the United States as a returning LPR in August 2001 with another individual's passport. In support, she submitted a copy of the passport page with an LPR admission stamp and the passport bearer's alien registration number, as well as a partial copy of a Form I-94, Arrival/Departure Record. The Applicant also filed the instant Form I-212 seeking an exception to the inadmissibility under section 212(a)(9)(A)(i) of the Act. As

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"). Instead, we reserve the issue.

stated, the Director denied the Form I-212, finding the Applicant permanently inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

The Applicant avers that this finding was incorrect because she previously submitted copies of the passport and Form I-94 to show that she was inspected and admitted to the United States in 2001, albeit under an assumed identity. She claims that this evidence establishes she did not trigger inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, which requires an individual to enter or attempt to reenter the United States *without being admitted* after having been ordered removed. We are not persuaded.

As an initial matter, we cannot afford significant weight to the photocopy of the passport with which the Applicant claims she was admitted, or the Form I-94 she claims she was issued upon her purported 2001 entry into the United States. First, the admission stamp in the passport shows only that the passport's bearer was admitted to the United States as an LPR in 2001. While it appears that the bearer's photograph in the passport has been substituted with that of the Applicant's, the timing of the substitution cannot be determined, as the record does not contain the original passport and the Applicant does not explain when and how she obtained it. Secondly, the Applicant provided only a partial copy of the Form I-94, which does not include the name of the individual to whom it was issued. Lastly, we note that returning LPRs do not need Form I-94 to enter the United States; rather a U.S. Customs and Border Protection (CBP) officer attaches Form I-94 to the nonimmigrant's passport upon entry to the United States.[3] Thus, if the Applicant was admitted to the United States as an LPR, as she claims, CBP likely would not have issued her a Form I-94 upon entry. We conclude, therefore, that the copies of the passport and Form I-94 alone are not sufficient to establish that the Applicant was inspected and admitted to the United States in 2001.

More importantly, the evidence the Applicant submitted in support of her adjustment and permission to reapply for admission requests shows that she had been present and residing in the United States prior to 2001. This evidence includes birth certificates of the Applicant's children born in the United States in 1999 and 2000.[4] The information in the certificates reflects that as of 1999 and 2000 the Applicant lived in [redacted] New York, and her children were born in a New York hospital. In addition, the record contains a copy of a bank statement indicating that in May 1999 the Applicant and her current spouse opened a joint checking account in the United States. These documents point to the Applicant's residence in the United States as of 1999 and thereafter. However, as the Applicant provides no documents to show that following her removal from the United States in [redacted] 1997 she was inspected and admitted or paroled into the United States in or before 1999, we cannot conclude that she did not reenter the United States without inspection and admission or parole after having been ordered removed. Consequently, the Applicant has not overcome the Director's finding of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act.

As stated, noncitizens who are inadmissible under that section 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 the last departure. Section 212(a)(9)(C)(ii) of the Act; *Matter of Torres-Garcia*, 23 I&N

[3] *See* U.S. Citizenship and Immigration Services, *Form I-94, Arrival/Departure Record, Information for Completing USCIS Forms*, https://www.uscis.gov.

[4] We note that the Applicant previously sought to adjust her status in 2003 based on a marriage to a U.S. citizen who is not her current spouse, and misrepresented her familial status by indicating that as of 2003 she had no children.

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). Here, the Applicant does not claim, and the record does not show that she remained outside of the United States for at least 10 years after she was last removed in [redacted]1997. As such, she currently does not meet the threshold requirement to seek permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act.

In conclusion, the record shows that the Applicant was last removed from the United States in 1997, and that she was residing in the United States as of 1999. The Applicant provided no evidence that she was inspected and admitted or paroled into the United States in or before 1999. Consequently, she has not met her burden of proof to establish that she is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act. And, because she has not remained abroad for the requisite 10-year period she is statutorily barred from seeking permission to reapply for admission at this time. Accordingly, there is no constructive purpose in evaluating whether the Applicant would warrant such permission pursuant to section 212(a)(9)(A)(iii) of the Act, as she is currently inadmissible and ineligible for admission to the United States on other grounds. Her Form I-212 therefore remains denied.

ORDER: The appeal is dismissed.