



**U.S. Citizenship
and Immigration
Services**

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 24726977

Date: MAR. 14, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant, a citizen and current resident 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), because he is 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 of the Nebraska Service Center denied the application, concluding 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 2011, the Applicant was removed from the United States, and in 2013, he reentered the United States without inspection. In [REDACTED] 2019, he was removed from the United States, and he currently resides in Mexico.

A U.S. Department of State consular officer found that the Applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act for reentering the United States without being inspected and admitted or paroled after his removal in 2011. The Director noted the inadmissibility finding and determined that the Applicant did not establish his eligibility for permission to reapply for admission because he has not remained outside the United States for 10 years.

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.*

The Applicant is not eligible for the exception under section 212(a)(9)(C)(ii) of the Act at this time because, according to the record, his most recent departure occurred in [REDACTED] 2019, less than 10 years ago. 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.