U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24726989

Date: MAR. 30, 2023

Appeal of San Diego, California Field Office Decision

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

The Applicant, a native and citizen of Mexico, was found inadmissible for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year and after having been ordered removed from the United States, and she seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii). Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion for those who seek admission after residing abroad for 10 years following their last departure.

The Director of the San Diego, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission to the United States After Deportation or Removal (permission to reapply for admission), concluding that the Applicant did not establish eligibility for consent to reapply and that she is ineligible for any relief due to the reinstatement of her removal order. 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)(C)(i)(I) of the Act provides that any foreign national who has been unlawfully present in the United States for an aggregate period of more than one year and who enters or attempts to reenter the United States without being admitted is inadmissible. Section 212(a)(9)(C)(i)(II) of the Act provides that any foreign national who has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible.

Foreign nationals found inadmissible under section 212(a)(9)(C)(i) 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 foreign national 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 the Department of Homeland Security (DHS) has consented to the foreign national's reapplying for admission.

Section 241(a)(5) of the Act permits the DHS Secretary to reinstate a prior removal order against a foreign national who illegally reenters the United States after having been removed or having departed voluntarily under an order of removal. An individual is not eligible and may not apply for relief under the Act when it is determined that they reentered the United States illegally after having been removed and a prior order of removal is reinstated.

II. ANALYSIS

The Applicant entered the United States without being admitted in August 1993, remained in the United States without authorization, and returned to Mexico in or around early March 2003. The Applicant accrued unlawful presence from April 1, 1997, the effective date of unlawful provisions under the Act, until her departure in or around early March 2003. On or around March 6, 2003, the Applicant entered the United States without being admitted, was apprehended, and was voluntarily returned to Mexico. She subsequently attempted to enter the United States without being admitted on [redacted] 2003, and she was removed from the United States pursuant to an expedited order of removal on that date. The Applicant then entered the United States without being admitted on or around March 30, 2003. On [redacted] 2013, the Applicant's removal order was reinstated, and in October 2018 she filed for permission to reapply for admission.

Based on the record, the Director determined that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act for entering the United States without being admitted after accruing an aggregate period of more than one year of unlawful presence and under section 212(a)(9)(C)(i)(II) of the Act for entering the United States without being admitted after being ordered removed. The Director mentioned consent to reapply for admission 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). In this case, the Applicant has not left the United States since entering without being admitted on March 30, 2003, and 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 determined that she did not meet the requirements for consent to reapply for admission. Furthermore, the Director found that the Applicant may not apply for any relief under the Act due to the reinstatement of her prior removal order under section 241(a)(5) of the Act, and she is therefore barred from approval of her permission to reapply for admission.

On appeal, the Applicant asserts that section 813(b) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA Reauthorization Act of 2005) applies to her case and permits approval of her permission to reapply for admission, the Director erred in not applying it to her case as it contains no restrictions, and statutory analysis and legislative history show it is a statute of general application. In enacting this legislation, Congress stated, in reference to the discretion to consent to reapply for admission, that the DHS "should particularly consider exercising this authority in cases under the Violence Against Women Act of 1994, cases involving nonimmigrants described in subparagraph (T) or (U) of section 101(a)(15) of the Immigration and Nationality Act . . . and relief

under section 240A(b)(2) or 244(a)(3) of such Act . . ."[1] As the Applicant is not applying for one of these types of cases or relief, her contention that section 813(b) of the VAWA Reauthorization Act of 2005 is applicable to her case is erroneous.

Next, the Applicant claims that 8 C.F.R. § 212.2 permits retroactively re-characterizing the triggering unlawful entry as lawful and the Director erred in not applying this regulation to her case. Furthermore, she argues *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007) and *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006) do not apply to her case, and *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006) is a fatally flawed decision as the Board of Immigration Appeals (the Board) exceeded its powers and erred in a myriad of ways. Additionally, she claims the facts, issues, and law of her case differ, and she is eligible due to being an applicant for adjustment of status under section 245(i) of the Act. We find the Applicant's contentions to be without merit. First, we will not address the numerous arguments that the Board erred in its precedent decisions as they are binding on us. Rather, we will review the relevant findings from these cases as they relate to the Applicant's contentions. In *Matter of Torres-Garcia,* the Board held that a foreign national who is inadmissible under section 212(a)(9)(C)(i)(II) of the Act remains inadmissible even if the foreign national obtained permission to reapply for admission prior to reentering unlawfully, and the Board also stated that the regulation governing permission to reapply for admission, 8 CFR 212.2, does not implement section 212(a)(9)(C)(ii) of the Act and cannot be interpreted in a manner that would allow a foreign national to circumvent the statutory 10-year limitation on section 212(a)(9)(C)(ii) waivers. *Id.* at 876. Further, in *Matter of Briones*, the Board held that adjustment of status under section 245(i) is not available to a foreign national who is inadmissible under section 212(a)(9)(C)(i)(I). *Id.* at 371.

Next, the Applicant asserts that her reinstatement order was made in violation of due process, as the interviewing USCIS officer at her adjustment of status hearing colluded with an Immigration and Customs Enforcement (ICE) agent to hand her over ICE, and it is therefore void. She also claims the "any relief" prohibition of section 241(a)(5) of the Act does not prevent the approval of permission to reapply for admission. The Applicant has not provided evidence to establish her reinstatement order was improperly issued or provided precedent law to establish the "any relief" prohibition of section 241(a)(5) of the Act does not prevent the approval of permission to reapply for admission. Last, the Applicant contends that the Director failed to exercise discretion to approve the permission to reapply for admission under 8 C.F.R. § 245.1(a) and 8 C.F.R. § 245.10. However, these regulations do not permit discretion to waive the applicability of section 212(a)(9)(C)(i) of the Act.

The record reflects that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act for entering the United States without admission on or around March 6, 2003, after accruing an aggregate period of more than one year of unlawful presence from April 1, 1997 until in or around early March 2003, and under section 212(a)(9)(C)(i)(II) of the Act for entering the United States without admission on or around March 30, 2003, after being ordered removed on [redacted], 2003. A foreign national who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply for admission unless the foreign national has been outside the United States for more than 10 years since the date of the foreign national's last departure from the United States. *See Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006); *Matter of Briones,* 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez,* 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C)(i)

[1] Pub. L. No. 109-162, tit. VIII, sec. 813(b)(2).

of the Act, it must be the case that the Applicant's last departure was at least ten years ago, the Applicant has remained outside the United States, and USCIS has consented to the Applicant's reapplying for admission. The Applicant has not departed the United States since entering in or around March 30, 2003, and remained outside of the United States for ten years, and therefore she is currently ineligible to apply for the exception to this inadmissibility. Furthermore, the Applicant may not apply for any relief under the Act due to the reinstatement of her prior removal order under section 241(a)(5) of the Act, and she is therefore barred from approval of her permission to reapply for admission.

ORDER: The appeal is dismissed.