U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26584617

Date: MAY 18, 2023

Motion on Administrative Appeals Office Decision

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

The Applicant seeks 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), because he will be inadmissible upon departing from the United States for having been previously ordered removed. *See* section 212(a)(9)(A)(ii) of the Act.

The Director of the Los Angeles, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission into the United States Following Deportation or Removal (Form I-212). After weighing the positive and negative factors presented in the record, the Director concluded that the application did not warrant a favorable exercise of discretion. On appeal, we determined that the Applicant is currently statutorily ineligible to apply for permission to reapply for admission and will remain so unless he departs and remains outside the United States for 10 years because he is permanently inadmissible pursuant to section 212(a)(9)(C)(i) of the Act in accordance with the United States Court of Appeal for the Ninth Circuit's holding in *Rivera Vega v. Garland*, 39 F.4th 1146, 1156 (9th Cir. 2022) that the provision at section 212(a)(9)(C)(i)(II) of the Act "applies retroactively to unlawful entries made before April 1, 1997, provided the alien did not apply for adjustment of status before that date."

On motion to reconsider, the Applicant maintains that he is not permanently inadmissible pursuant to 212(a)(9)(C)(i) of the Act, as his case is distinguishable from *Rivera Vega v. Garland* because he is not seeking adjustment of status and his removal order has not been reinstated. 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 motion.

A motion to reconsider must establish that our prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

The issue before us is whether the Applicant has established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy and was incorrect based on the evidence in the record at the time of the decision. We find that the Applicant has not established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

The record establishes that the Applicant entered the United States without being inspected and admitted in 1977, briefly departed in 1980, and reentered without inspection and admission approximately one month later. The record reflects that U.S. immigration authorities placed him in deportation proceedings, and he was deported to Mexico on [redacted] 1994. The Applicant indicated that several days after his deportation, he once again re-entered without inspection and admission or parole and has continuously remained in the United States since that time. The Applicant's reentry to the United States without inspection following his deportation is an immigration violation that is specifically addressed under section 212(a)(9)(C)(i)(II) of the Act. As detailed in our decision to dismiss the appeal, the United States Court of Appeals for the Ninth Circuit held in July 2022 that the provision at section 212(a)(9)(C)(i)(II) of the Act "applies retroactively to unlawful entries made before April 1, 1997, provided the alien did not apply for adjustment of status before that date." *Rivera Vega v. Garland*, 39 F.4th 1146, 1156 (9th Cir. 2022).[1]

The Applicant is currently residing in the United States and does not indicate that he has departed since his last unlawful entry in 1994. The Applicant has not overcome our previous determination that he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and is currently statutorily ineligible to apply for permission to reapply for admission and will remain so unless he departs and remains outside the United States for 10 years.

Here, the Applicant has not established that our prior decision incorrectly applied the pertinent law or agency policy, or established that our prior decision was incorrect based on the evidence of record at the time of the initial decision, as required under 8 C.F.R. § 103.5(a)(3).

ORDER: The motion to reconsider is dismissed.

[1] Contrary to counsel's assertion on motion, the United States Court of Appeals for the Ninth Circuit did not expressly limit their holding in *Rivera Vega,* that 212(a)(9)(C)(i)(II) of the Act applies retroactively to unlawful entries made before April 1, 1997, to only those noncitizens who are seeking adjustment of status and who had their removal order reinstated.