U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26794176

Date: MAY 30, 2023

Appeal of Los Angeles, California Field Office Decision

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

The Applicant was found inadmissible for entering the United States without being admitted after having been ordered removed and he 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).

The Director of the Los Angeles, California Field Office denied the application. The Director determined that the Applicant was inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act, for having entered the United States without being admitted after having been ordered removed. The Director concluded that as the Applicant had not remained outside the United States for 10 years since his last departure, he was not currently eligible for relief under the Act. The matter is now before us on appeal.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

Section 212(a)(9)(C) of the Act provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than one year, or 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.

The record reflects that the Applicant entered the United States without being admitted in 2005 and was subsequently apprehended. The Applicant was ordered expeditiously removed and departed the United States pursuant to the expedited removal order on [redacted] 2005. The Applicant subsequently reentered the United States without being admitted on an unknown date after departing

pursuant to the removal order. The Director determined that the Applicant was inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act, for having entered the United States without being admitted after having been ordered removed.

On appeal counsel for the Applicant maintains that noncitizens who have been ordered removed, but have not yet left the United Sates and will be applying for an immigrant visa abroad, may file the Form I-212, Application for Permission to Reapply for admission, before departing the United States. However, consent to reapply for admission in this situation applies only to inadmissibility under INA section 212(a)(9)(A). Noncitizens cannot file an application for consent to reapply for admission while in the United States if they are inadmissible under INA section 212(a)(9)(C). www.uscis.gov/sites/default/files/document/forms/i-212instr.pdf

As detailed above, a noncitizen who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the noncitizen has been outside the United States for more than 10 years since the date of the noncitizen'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) 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 U.S. Citizenship and Immigration Services has consented to the Applicant's reapplying for admission. The Applicant has not remained outside the United States for 10 years after his last departure in 2005. He is thus currently ineligible to apply for the exception to his inadmissibility under section 212(a)(9)(C) of the Act. The application for permission to reapply for admission must remain denied.

ORDER: The appeal is dismissed.