U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29655104

Date: JAN. 4, 2024

Appeal of New York, 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, 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 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 New York, New York Field Office initially approved the Form I-212, Application for Permission to Reapply for Admission (application for permission to reapply), in error. The Director then revoked the approval of the application for permission to reapply and denied it, concluding that the Applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act and ineligible to apply for the exception to his inadmissibility. 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 noncitizen who has been unlawfully present in the United States for an aggregate period of more than 1 year, and who enters or attempts to reenter the United States without being admitted, is inadmissible.

Noncitizens found inadmissible under section 212(a)(9)(C)(i)(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 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 should be granted permission to reapply in the exercise of discretion. The record reflects that the Applicant entered the United States without being admitted on June 1, 2001, departed the United States on June 1, 2005, and subsequently reentered the United States without being admitted on March 26, 2007, as detailed by the Applicant on his application for permission to reapply. The Applicant then departed the United States on November 28, 2018. The Applicant does not contest these entry and exit dates on appeal. The Applicant is therefore inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, for entering the United States on March 26, 2007, without being admitted, after accruing more than one year of unlawful presence in the United States from June 1, 2001, until June 1, 2005.

On appeal, the Applicant claims that the initial approval of his application for permission to reapply should have been acted upon, and the Director's most recent decision was erroneous, arbitrary, capricious, and an abuse of discretion. We disagree. The Director acknowledged that the initial approval was in error and correctly discussed why the Applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act and ineligible to apply for the exception to his inadmissibility. Additionally, the Applicant asserts that he is not required to remain outside of the United States for 10 years, but the case he cites in support of this assertion is related to inadmissibility under section 212(a)(9)(B) of the Act and does not apply to his inadmissibility under section 212(a)(9)(C)(i)(I) of the Act.

A noncitizen who is inadmissible under section 212(a)(9)(C)(i)(I) 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)(i)(I) 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 remained outside the United States for 10 years after his last departure on November 28, 2018. He is therefore currently ineligible to apply for the exception to his inadmissibility under section 212(a)(9)(C)(i)(I) of the Act. The application for permission to reapply was properly revoked and must remain denied.

ORDER: The appeal is dismissed.