U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21289941

Date: SEP. 06, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant is a native and citizen of Nicaragua who seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). The Director of the Salt Lake City, Utah Field Office determined that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation because in [redacted] 1998 he used a fake permanent resident card in attempt to gain entry to the United States but was then detained and expeditiously removed. The Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, as a matter of discretion, finding that the Applicant was also inadmissible under section 212(a)(9)(C)(i)(II) of the Act because he reentered the country without admission in August 1998 and that he would remain inadmissible even if the waiver application were approved. We dismissed the Applicant's appeal and his subsequent motion to reopen and reconsider our decision. The matter is now before us on a second motion to reopen and reconsider.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The record reflects that in [redacted] 1998 the Applicant attempted to enter the United States with a fraudulent permanent resident card but was detained and expeditiously removed, and then in August 1998 entered the country without inspection. In 1999 the Applicant applied for Temporary Protected Status (TPS) that was later granted and in 2017 he departed from and returned to the United States with an approved TPS travel document.

In denying the waiver application the Director concluded that even if the Applicant established extreme hardship to a qualifying relative he would remain inadmissible under section 212(a)(9)(C)(i)(II) of the Act based on his entry into the country without admission in August 1998

after being ordered removed in [redacted] 1998.[1] The Director determined that due to this inadmissibility the Applicant needed to obtain permission to reapply for admission into the United States but was statutorily ineligible to seek this relief because he had not remained outside of the United States for 10 years following his last departure.

On appeal of the Director's decision and on prior motion the Applicant argued that he is not inadmissible under Section 212(a)(9)(C)(i)(II) of the Act because he reentered the United States pursuant to a grant of advanced parole in 2017. In our previous decisions, incorporated here by reference, we noted that the inadmissibility finding under section 212(a)(9)(C)(i)(II) of the Act was based on his August 1998 reentry into the United States without inspection or admission, not the 2017 entry on advance parole. We explained that under section 212(a)(9)(C)(i)(II) of the Act 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 who are found inadmissible pursuant to this section of law may seek permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act, which provides that inadmissibility shall not apply to a foreign national who seeks admission more than 10 years after the date of their last departure from the United States, if the Secretary of Homeland Security consents to the individual's reapplying for admission prior to their reembarkation at a place outside the United States, or their attempt to be admitted from a foreign contiguous territory.[2]

On his prior motion the Applicant referred to a USICS Policy Memorandum specifying that under our Adopted Decision *Matter of Z-R-Z-C-* a TPS recipient granted authorization to temporarily travel abroad and then reenters the United States using a Department of Homeland Security (DHS) travel document resumes the same immigration status as at the time of departure.[3] We determined, however, that neither the Policy Memorandum nor *Matter of Z-R-Z-C-* discussed inadmissibility under Section 212(a)(9)(C)(i)(II) of the Act and did not support the Applicant's claim that he was no longer inadmissible under Section 212(a)(9)(C)(i)(II) of the Act. We further observed that the TPS travel document issued to the Applicant explains that an individual found inadmissible needs to apply for a waiver of inadmissibility. We determined that evidence submitted on motion showing the Applicant entered the United States pursuant to a grant of advanced parole in August 2017 did not support that he is not inadmissible under Section 212(a)(9)(C)(i)(II) of the Act. We concluded that the record showed the Applicant was inadmissible under Section 212(a)(9)(C)(i)(II) of the Act and that he has not remained outside of the United States for at least 10 years after his last departure.

With the instant motion the Applicant again contends that rather than his 1998 entry without inspection we should consider his 2017 entry via advance parole where he was inspected and admitted at a port of entry by U.S. Customs and Border Protection to determine if he can adjust status under Section 245(a) of the Act. The Applicant states that he traveled with advance parole and was paroled when he returned to the United States so he has satisfied the prerequisites for adjustment of status. In support he submits a copy of a recent U.S. Supreme Court decision, *Sanchez v Mayorkas,* 141 S.Ct. 1809 (2021), which discusses lawful status versus admission as distinct concepts. The Court held that the Act does not permit individuals who have received TPS to adjust to LPR status if they were not

[1] The Applicant claimed his removal would cause extreme hardship to a qualifying relative, his U.S. citizen father.

[2] Foreign nationals who are found to be inadmissible under this section of the act must file a Form I-212, Application for Permission to Reapply for Admission.

[3] USCIS Policy Memorandum PM-602-0179, *Matter of Z-R-Z-C-*, Adopted Decision 2020-02 (AAO Aug. 20, 2020), https://www.uscis.gov/legal-resources/policy-memoranda.

lawfully inspected and admitted when they first arrived in the United States. The Court's holding did not address subsequent travel with advance parole, and in fact noted specifically that it was expressing no view on whether a TPS recipient who entered the United States based upon a grant of advance parole is eligible to adjust absent any other bar.

We note that since the Applicant submitted the instant motion *Matter of Z-R-Z-C-* has been rescinded as an Adopted Decision.[4] However, the July 2022 policy memorandum discussing the rescission does not address inadmissibility under Section 212(a)(9)(C)(i)(II) of the Act, which is the issue here. Rather, the policy guidance clarifies that a TPS beneficiary whom DHS has inspected and admitted into TPS after authorized travel is "inspected and admitted" for purposes of adjustment of status under Section 245(a) of the Act and Section 245(k) of the Act, even if the TPS beneficiary was present in the United States without admission or parole when initially granted TPS.

On motion the Applicant has not established that our prior decision was in error. Although the Applicant proffered *Sanchez v. Mayorkas* as new case law in support of his motion to reconsider, it does not support the Applicant's contention he is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act nor does it show that our prior decision was incorrect.

On the instant motion the Applicant for the first time disputes the Director's finding that he is inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act, which provides that any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. The Applicant maintains that he previously explained that in 1998 he was far from his family desperately seeking food and shelter along the border of Mexico and the United States when he fell under control of human traffickers who provided him with a fake document and threatened to abandon him in the wilderness, so he reluctantly agreed. The Applicant contends that he was coerced into using a fraudulent document so is therefore not inadmissible. Despite these assertions, the record reflects that the Applicant still has a 1998 order of removal, he was removed pursuant to that order, and he subsequently entered the United States without inspection. As such, he remains inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Because the Applicant is still inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and he will remain so until he remains outside the United States for 10 years, we will not further address his claims regarding inadmissibility for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act.

The new evidence submitted by the Applicant is not sufficient to warrant reopening his appeal and he has not established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. Accordingly, the motions to reopen and reconsider are dismissed. The Applicant's waiver application remains denied.

ORDER: The motion to reconsider is dismiss.

FURTHER ORDER: The motion to reopen is dismissed.

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[4] USCIS Policy Memorandum PM-602-0188, *Rescission of Matter of Z-R-Z-C- as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries* (July 1, 2022), https://www.uscis.gov.