U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20168971

Date: FEB. 2, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant filed an Application to Waive Inadmissibility Grounds, Form I-601, seeking a waiver of inadmissibility for illegal presence in the United States under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), and for fraud and misrepresentation under Section 212(i)(1) of the Act. 8 U.S.C. § 1182(a)(9)(B)(v), (i)(1); *see also* Section 212(a)(6)(C)(i), (9)(B)(i)(II), (9)(C)(i)(II) of the Act.

The Director of the Nebraska Service Center denied the application, concluding that the Applicant is inadmissible under Section 212(a)(9)(C)(i)(II) of the Act, because he was ordered removed from the United States in 2001, re-entered the United States without being admitted in 2006, and remained in the United States without lawful status until 2020.[1]

Specifically, according to a 2001 document in the record, entitled "Determination of Inadmissibility," the then Immigration and Naturalization Service (INS) found the Applicant inadmissible because he, by fraud or willfully misrepresenting a material fact, sought to procure admission into the United States. The document includes an "Order of Removal" and "Verification of Removal," indicating that the Applicant was removed from the United States in [redacted] 2001. On page 2 of his Form I-601, the Applicant admitted that he later entered the United States in May 2006 without being admitted.[2] Similarly, on appeal, the Applicant concedes that he entered the United States in "May of 2006 . . . without inspection and . . . live[d] in the United States for over 13 years." In addition, the Director, as the former INS had determined, found that the Applicant is inadmissible for fraud and misrepresentation under Section 212(a)(6)(C)(i) of the Act for using another individual's immigration document to attempt to enter the United States in 2001.

Additionally, the Director explained that the record did not show that the Applicant had remained outside of the United States for 10 years following his last departure in 2020. As such, the Director found that he was illegible to file an Application for Permission to Reapply for Admission into the

[1] The record shows that United States Citizenship and Immigration Services (USCIS) granted the Applicant's Form I-601A, Provisional Unlawful Presence Waiver, in 2018. This approval, however, was automatically revoked when a Department of State consular officer found the Applicant inadmissible under Section 212(a)(9)(C)(i)(II) the Act, and for fraud and misrepresentation under Section 212(a)(6)(C)(i) of the Act. *See* 8 C.F.R. § 212.7(e)(14).

[2] The Applicant did not disclose on his Form I-601 his prior 2001 entry or removal.

United States After Deportation or Removal, Form I-212, to overcome his inadmissibility under Section 212(a)(9)(C)(i)(II) of the Act. Accordingly, the Director denied the Form I-601 based on discretion, because the Form I-601, even if approved, would not waive the Applicant's inadmissibility under Section 212(a)(9)(C)(i)(II) of the Act.

On appeal, the Applicant discusses the circumstances surround his 2001 entry and removal from the United States. He claims that he was 15 years old at the time and acted at the directions of his father and "a coyote" when he used "an invalid child's green card . . . [to] gain entry into the United States." The Applicant argues that because he was 15 years old at the time, he "did not possess the necessary *mens rea* and/or the willfulness or the intent to perpetuate a fraud or misrepresentation." He further contends that because he was 15 years old in 2001, he should not be found to be inadmissible for fraud and misrepresentation under Section 212(a)(6)(C)(i) of the Act or for illegal presence under Section 212(a)(9)(B)(i)(II) of the Act. The Applicant, however, does not address the Director's finding that he is inadmissible under Section 212(a)(9)(C)(i)(II) of the Act, for entering the United States without being admitted after being removed pursuant to an order of removal.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also 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)(II) of the Act provides that any noncitizen who has been ordered removed and who subsequently enters or attempts to reenter the United States without being admitted is inadmissible. Noncitizens found inadmissible under Section 212(a)(9)(C)(i)(II) of the Act may file a Form I-212 to 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 noncitizen who seeks admission more than 10 years after the date of his or her last departure from the United States if the Secretary of Homeland Security consents to the reapplying for admission prior to the noncitizen's attempt to be readmitted. A noncitizen may not apply for permission to reapply unless he or she has been outside the United States for more than 10 years since the date of his or her last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *see also Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). In other words, a noncitizen may file a Form I-212 to overcome his or her inadmissibility under Section 212(a)(9)(C)(i)(II) of the Act only after he or she has remained outside of the United States for at least 10 years after his or her last departure.

II. ANALYSIS

As discussed, the record shows that in [redacted] 2001, the Applicant presented a fraudulent document to gain entry into the United States and was ordered removed. After his removal, the Applicant acknowledged that he reentered the United States without being admitted in 2006. These actions make him inadmissible under Section 212(a)(9)(C)(i)(II) of the Act. While the Applicant claims on appeal that in 2001, he was 15 years old, the former INS documents indicate that at the time, he told immigration officials that he was born in 1982, and thus, was 18 years old in 2001. Regardless, the Applicant has not pointed to any legal basis supporting the position that an individual's age could

nullify the immigration and legal consequences of his illegal reentry after removal from the United States pursuant to a removal order.

In addition, the record indicates that the Applicant has not remained outside of the United States for at least 10 years after his last departure in 2020. As such, he is ineligible to file a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, to seek permission to reapply for admission into the United States. Without an approved Form I-212, he is unable to overcome his inadmissibility under Section 212(a)(9)(C)(i)(II) of the Act. We will therefore dismiss his appeal, because he has not shown that the Director erred in denying his Form I-601 based on discretion, because the Form I-601, even if approved, would not waive his inadmissibility under Section 212(a)(9)(C)(i)(II) of the Act.

III. CONCLUSION

Based on the reasons we have discussed above, we conclude that the Director did not err in denying the Applicant's Form I-601 based on discretion, which even if granted would not waive his inadmissibility under Section 212(a)(9)(C)(i)(II) of the Act. Accordingly, his Form I-601 remains denied.

In these proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act. Here, that burden has not been met.

ORDER: The appeal is dismissed.