U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19581592

Date: SEP. 06, 2022

Appeal of Harlingen, Texas Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has been found inadmissible seeks waiver of the applicable grounds of inadmissibility. *See* Immigration and Nationality Act (the Act) sections 212(a)(9)(B)(v) and (a)(9)(C)(iii), 8 U.S.C. § 1182(a)(9)(B)(v) and (a)(9)(C)(iii).

The Director of the Harlingen, Texas Field Office denied the application concluding that the Applicant, was permanently inadmissible under section 212(a)(9)(C)(i)(I) and (II) of the Act for having entered the United States without being admitted after having accruing more than one year of unlawful presence and having been ordered removed. Further, the Director determined that the Applicant was also inadmissible under section 212(a)(9)(B)(i)(II) of the Act based on accruing unlawful presence in the United States for a year or more and again seeking admission within 10 years of her departure or removal from the United States. The Director also concluded that the Applicant did not qualify for the exception to unlawful presence under section (a)(9)(B)(iii)(IV) of the Act, as a VAWA self-petitioner,[1] since there was not a substantial connection between the battery and cruelty inflicted on her by her legal permanent resident spouse and her violation of the terms of her nonimmigrant visa. In making this determination, the Director stated that the Applicant had not been issued a nonimmigrant visa and therefore, did not qualify for the exception to being considered unlawfully present. The Director last concluded that since the Applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act and not statutorily eligible for a waiver, no purpose would be served in granting her waiver for inadmissibility under section 212(a)(9)(C)(iii) of the Act.

On appeal, the Applicant contends the Director erred in determining that she accrued a year or more of unlawful presence, contending that she only accrued four weeks of unlawful presence prior to her last reentry in 2000 and accordingly is not inadmissible under sections 212(a)(9)(C)(i)(I) or 212(a)(9)(B)(i)(II) of the Act. In addition, the Applicant states that the Director erred in not addressing her inadmissibility under section 212(a)(6)(E) of the Act for assisting her daughter across the U.S. border without inspection and her eligibility for a waiver of this ground for inadmissibility under section 212(d)(11) of the Act.

[1] The Applicant filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, under the Violence Against Women Act (VAWA), which was approved in February 2015.

The Applicant bears the burden of proof in these proceedings to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review 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 remand the matter to the Director for additional review and the entry of a new decision.

I. LAW

A noncitizen who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i)(II) of the Act. A noncitizen is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay or if present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act.

Section 212(a)(9)(B)(iii)(IV) states that section 212(a)(9)(B)(i) shall not apply to a noncitizen who would be described in section 212(a)(6)(A)(ii) of the Act "if 'violation of the terms of the [noncitizen's] nonimmigrant visa' were substituted for 'unlawful entry in the United States[.]'" Section 212(a)(6)(A)(ii) provides an exception for certain battered women and children, encompassing, in relevant part: noncitizens who are VAWA self-petitioners and have been subject to battery or extreme cruelty by a spouse; and where "there was a substantial connection between the battery or extreme cruelty . . . and the [noncitizen's] unlawful entry into the United States."

Inadmissibility under section 212(a)(9)(B)(i) may, in turn, be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent. Section 212(a)(9)(B)(v) of the Act.

Section 212(a)(9)(C)(i) of the Act provides that a 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." Pursuant to section 212(a)(9)(C)(ii) of the Act, there is an exception for any "alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's 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 alien's reapplying for admission."

Inadmissibility pursuant to section 212(a)(9)(C)(i) of the Act may also be waived as a matter of discretion, in the case of a noncitizen who is a VAWA self-petitioner, if there is a connection between the noncitizen's battering or subjection to extreme cruelty and his or her removal, departure from the United States, reentry or reentries into the United States, or attempted reentry into the United States. Section 212(a)(9)(C)(iii) of the Act.

II. FACTS AND PROCEDURAL HISTORY

The record reflects that the Applicant entered the United States without inspection in 1990, was granted voluntary departure in 1993, and given until [redacted] 1994, to depart the United States. The

Applicant did not depart by this assigned date and her voluntary departure was modified to a final order of removal. The Applicant indicated that she departed the United States in approximately November 1994, but later reentered the United States without inspection in June 1995 and May 1998, and remained in the United States for short periods, each time returning to Mexico. Subsequently, the Applicant again reentered the United States without inspection in May 2000 and has remained in the country since that time. In September 2005, the Applicant's legal permanent resident spouse filed a Form I-130, Petition for an Alien Relative, on her behalf that was approved, but this visa petition was later administratively closed in 2011. Thereafter, the Applicant separated from her spouse and filed a VAWA petition, which was approved in February 2015.

III. ANALYSIS

A. Inadmissibility under Section 212(a)(9)(B)(i)(II) of the Act

The Applicant contests the Director's inadmissibility determination under section 212(a)(9)(B)(i)(II) of the Act, emphasizing that the decision lacked discussion of the evidence and assertions submitted by the Applicant, including affidavits from her and her daughters, indicating that she was not unlawfully present in the United States for more than one year after April 1, 1997, and prior to her last reentry in May 2000. In the denial decision, the Director stated the Applicant testified that she reentered the United States from Mexico in June 1995, May 1998, and May 2000, and that it "is unclear how long [the Applicant] remained in the United States." The Director further indicated that "USCIS presumes that you remained in the country up until right before your last re-entry because evidence to the contrary was not provided."

We acknowledge the Applicant's arguments; however, we need not address this issue, as even assuming the Applicant is inadmissible for unlawful presence for her entries prior to May 2000, the instant application was filed more than 10 years after the claimed unlawful presence discussed by the Director. During the pendency of the Applicant's appeal, USCIS issued policy guidance clarifying that, as long as a noncitizen inadmissible under section 212(a)(9)(B)(i) again seeks admission more than 10 years after the relevant departure or removal, as the Applicant is doing here, the noncitizen is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act based on the period of unlawful presence preceding the departure or removal because the 10-year period after that departure or removal has ended. *See* 8 *USCIS Policy Manual* Part O.6, https://www.uscis.gov/policymanual; *see also* Policy Alert PA-2022-15, *INA 212(a)(9)(B) Policy Manual Guidance* (June 24, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates. The guidance further clarifies that the noncitizen remains no longer inadmissible even if they returned to the United States, without or without authorization, during that time. *See id.* The new policy applies to inadmissibility determinations made on or after June 24, 2022. *See* Policy Alert PA-2022-15, at 2. Therefore, even if the Applicant were inadmissible based on her unlawful presence prior to 2000, this inadmissibility ground no longer applies.

B. Inadmissibility under Section 212(a)(9)(C)(i)(II) of the Act

As determined by the Director, and acknowledged by the Applicant, the record reflects that the Applicant entered the United States without inspection after departing the United States following being ordered removed. Therefore, the record demonstrates that the Applicant is inadmissible under section

212(a)(9)(C)(i)(II) of the Act for entering the United States without being admitted after being ordered removed.[2]

However, section 212(a)(9)(C)(iii) of the Act waives inadmissibility under section 212(a)(9)(C) of the Act if a VAWA self-petitioner demonstrates a connection between battery or extreme cruelty forming the basis for the VAWA claim and their departure and reentry into the United States. Here, the Applicant asserts on appeal that all her departures from and reentries into the United States were connected to the battery or extreme cruelty she suffered at the hands of her legal permanent residence spouse. The record includes affidavits from the Applicant, her children, sister, a counselor, a social worker, amongst others, detailing the circumstances of her abuse at the hands of her legal permanent resident spouse. For instance, a letter from a licensed professional counselor dated in February 2014 confirms the abuse faced by the Applicant and indicates that due to this abuse she was unable to separate from her husband for over 20 years. Likewise, a letter from social worker dated in January 2014 similarly details the abuse she faced and indicates her inability to separate from her husband. Additional letters from the Applicant's sister and her daughter reflect that she was living with constant abuse and threats and that she was unable to separate from her husband during the period of her exits and reentries. As such, the evidence submitted by the Applicant appears to substantiate her assertion that there was a connection between the Applicant's reentries after she was ordered removed and the asserted battery or extreme cruelty she suffered at the hands of her spouse.

In the denial, the Director did not sufficiently consider whether there was a connection between the Applicant's reentries after she was ordered removed and the asserted battery or extreme cruelty she suffered at the hands of her spouse and, accordingly, whether she established eligibility for a waiver of her inadmissibility under section 212(a)(9)(C)(iii) of the Act.

C. Inadmissibility under section 212(a)(6)(E) of the Act

Furthermore, on appeal, the Applicant asserts that she sought waiver of, and the Director did not consider, her inadmissibility under section 212(a)(6)(E) of the Act for assisting her daughter across the U.S. border without inspection. Section 212(d)(11) of the Act allows for a discretionary waiver for inadmissibility for smuggling for humanitarian purposes, to assure family unity, when it is otherwise in the public interest, and if the noncitizen smuggled was at the time was the applicant's spouse, son, or daughter. As stated by the Applicant on appeal, the Director did not discuss this ground of inadmissibility, nor her eligibility for a waiver of this ground of inadmissibility.

IV. CONCLUSION

We will remand this matter for a full review of the record, including the Applicant's contentions and the evidence submitted on appeal, to determine whether she has: demonstrated that there is a there was

[2] As discussed above, the Director further determined that the Applicant was inadmissible under section 212(a)(9)(C)(i)(I) of the Act based on her entry into the United States without being admitted following unlawful presence in the United States for an aggregate period of more than one year. On appeal, the Applicant contests this determination, asserting that the Director did not give due consideration to the evidence submitted regarding her time in the United States and whether she, in fact, accrued one year of unlawful presence. However, in light of her inadmissibility under section 212(a)(9)(C)(i)(II) of the Act and our remand of this matter to the Director to analyze whether she is eligible for the waiver under section 212(a)(9)(C)(iii) of the Act, we need not address this issue in detail.

a connection between her reentries after she was ordered removed and the asserted battery or extreme cruelty she suffered at the hands of her legal permanent resident spouse such that her inadmissibility under section 212(a)(9)(C)(i) of the Act shall be waived under section 212(a)(9)(C)(iii) of the Act; and whether she is inadmissible under section 212(a)(6)(E) of the Act and, if so, eligible for a waiver under section 212(d)(11) of the Act.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.