U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27646288

Date: AUG. 24, 2023

Mexico City, Mexico City District Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Mexico currently residing in Mexico, has applied for an immigrant visa, which requires her to show that she is admissible to the United States or eligible for a waiver of inadmissibility. A U.S. Department of State (DOS) consular officer found the Applicant inadmissible as a noncitizen who has been unlawfully present in the United States for one year or more and again seeks admission within ten years of their departure or removal from the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II). She seeks a discretionary waiver of this inadmissibility under section 212(a)(9)(B)(v) of the Act.

The Director of the Mexico City, Mexico District Office denied the waiver application in January 2010, concluding that the record established that in addition to the ground of inadmissibility identified by DOS, the Applicant was also inadmissible under section 212(a)(9)(C)(i)(II) for which no waiver was available. 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.

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) of the Act. A noncitizen is deemed to be unlawfully present in the United States if present 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)(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 . . . and who enters or attempts to reenter the United States without being admitted is inadmissible." The accrual of unlawful presence for purposes of inadmissibility determinations under section 212(a)(9)(B)(i) or 212(a)(9)(C)(i) of the Act begins no earlier than the effective date of the amendment enacting this section, which is April 1, 1997. 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."

The record indicates that the Applicant previously entered the United States without inspection in 2000 and was expeditiously removed. She subsequently re-entered the United States in 2000, and she remained after her second entry without inspection until she left the United States in November 2007 under a grant of voluntary departure. Accordingly, the Director determined that, in addition to being inadmissible under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence, the Applicant is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act as a noncitizen who has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted. Permission to reapply for admission is an exception to this inadmissibility that 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.[1] Section 212(a)(9)(C)(ii) of the Act. Because the Applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act at the time of the Director's decision and was statutorily ineligible for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act at that time, the Director ultimately denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, as a matter of discretion, as no purpose would be served in reaching the request to waive the other remaining inadmissibility ground for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act.

However, as noted above, USCIS records indicate the Applicant left the United States in 2007 and has not returned. She has remained outside the United States for more than 10 years; as such, she is not seeking admission within 10 years of her last departure. She is therefore no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act. As such, no waiver is needed of that ground of inadmissibility, and her appeal of the denial of her Form I-601 as to that basis is moot. However, despite her eligibility to seek permission to reapply for admission pursuant to a Form I-212, she remains permanently inadmissible under section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed and then entering or attempting to enter the United States without being admitted, so her Form I-601 cannot be approved.

ORDER: The appeal is dismissed.

[1] This exception can be sought through the filing of a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212). As of the issuance of this decision, there is no indication in the record that the Applicant has filed a Form I-212; thus, we do not consider her eligibility for such an exception.