U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24727001

Date: MAR. 14, 2023

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a citizen of Mexico, has applied for an immigrant visa and seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), for unlawful presence. U.S. Citizenship and Immigration Services may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Applicant has also been found inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for entering the United States without being admitted after having been ordered removed. The Director of the Nebraska Service Center denied the application as a matter of discretion because the Applicant is ineligible to reapply for admission into the United States until February 2029, at the earliest. 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.

Section 212(a)(9)(C)(i)(II) of the Act provides that any noncitizen who has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible. Noncitizens found inadmissible under section 212(a)(9)(C) 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.

A U.S. Department of State consular officer found that the Applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act for reentering the United States without being inspected and admitted or paroled after his removal in 2011.[1] The Director noted the inadmissibility finding and determined that the Applicant did not establish his eligibility for permission to reapply for admission because he has not remained outside the United States for 10 years.

[1] The record reflects that in 2011, the Applicant was removed from the United States, and in 2013, he reentered the United States without inspection. In [redacted] 2019, he was removed from the United States and currently resides in Mexico.

A noncitizen who is inadmissible under section 212(a)(9)(C)(i)(II) of the Act may not seek permission to reapply unless they have been outside the United States for more than 10 years since the date of their last departure from the United States. Matter of Torres-Garcia, 23 I&N Dec. 866, 873 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, it must be the case that the noncitizen's last departure was at least 10 years ago, they have remained outside the United States, and USCIS has granted them permission to reapply for admission into the United States. Id.

The Applicant is not eligible for the exception under section 212(a)(9)(C)(ii) of the Act at this time because, according to the record, his most recent departure occurred in [redacted] 2019, less than 10 years ago. Accordingly, we will not review whether the Applicant is eligible for a waiver of his inadmissibility for unlawful presence, as he remains inadmissible under section 212(a)(9)(C)(i)(II) of the Act and cannot apply for the exception until 2029. The Applicant's waiver application therefore remains denied.

ORDER: The appeal is dismissed.