U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16005309

Date: APR. 06, 2022

Appeal of Los Angeles County Field Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant seeks approval of her application for permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii).

The Director of the Los Angeles County Field Office denied the application. The Director concluded that no purpose would be served in approving the application for permission to reapply for admission because the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (I-485), had been denied concurrently for ineligibility under section 245(a) of the Act.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), provides that any "arriving alien . . . who has been ordered removed under section 235(b)(1) [of the Act, 8 U.S.C. § 1225(b)(1),] or at the end of proceedings under section 240 [of the Act, 8 U.S.C. § 1229a,] initiated upon the arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible."

Foreign nationals found inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) if "prior to the date of the reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Secretary of Homeland Security has consented to the foreign national's reapplying for admission."

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."

II. ANALYSIS

The Applicant entered the United States without authorization on [redacted] 2003, and was apprehended the same day at the port of entry. She was deemed inadmissible as an "arriving alien" under section 212(a)(6)(A)(i) of the Act and was ordered expeditiously removed on [redacted] 2003. Upon her removal, she became inadmissible for a period of five years under section 235(b)(1) of the Act. However, the Applicant immediately returned to the United States on the same date and has remained in the United States since her second entry, on [redacted] 2003. The Applicant asserts that when she reentered the United States on [redacted] 2003, although she was not in possession of any valid entry document required by the Act, she was "waved in" at the port of entry.

With the Form I-212 and I-485, the Applicant concurrently filed Form I-601, Application to Waive Inadmissibility Grounds (I-601), seeking to waive her inadmissibility. On the Form I-601, the Applicant checked Box 17 of Section A, identifying her reason for inadmissibility as: "I have been ordered removed or I have been unlawfully present in the United States for more than one year, in the aggregate, and I subsequently reentered or attempted to reenter without being admitted."

The Director concluded that the Applicant did not establish that she was inspected and admitted or paroled when she returned to the United States after her order of removal on [redacted] 2003. Therefore, the Director denied the I-485 and I-601, finding the Applicant inadmissible under section 212(a)(9)(C) of the Act. The Director also determined that the Applicant was inadmissible under section 212(a)(9)(B)(i) of the Act, for having accrued more than one year of unlawful presence in the United States.[1]

On appeal, the Applicant reasserts that she is inadmissible under section 212(a)(9)(A)(i) of the Act, rather than 212(a)(9)(C). Citing *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010), she maintains that, because she was waved through on her last entry to the United States on [redacted] 2003, this should be considered a lawful admission. She further asserts that more than five years has passed since her order of removal in 2003, and that there is no statutory requirement that the five years of inadmissibility be spent outside of the United States.

In *Matter of Quilantan*, the Board of Immigration Appeals (Board) found that in situations where the manner of entry was not in dispute, a foreign national who was waved through at the border could be considered inspected and admitted for the purpose of section 245(a) of the Act, 8 U.S.C. § 1255(a). When issuing *Quilantan*, the Board reaffirmed *Matter of Areguillan*, 17 I&N Dec. 308 (BIA 1980) (holding that foreign nationals bear the burden of establishing that they presented themselves for inspection). Here, the Director found that the Applicant had not established that she was inspected, admitted, or paroled. The Applicant did not submit additional evidence on appeal to establish her prior lawful admission and that her manner of entry was not in dispute. The only evidence of her [redacted] 2003 entry to the United States is from the Applicant's own statement in the record. As

[1] The Applicant has not appealed the decisions of the I-485 or I-601.

noted above, it is the Applicant's burden to establish that she presented herself for inspection. *Id.* Her statement alone is insufficient to meet this burden.

An individual who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply for admission to overcome this ground of inadmissibility unless the individual has been outside the United States for more than ten years since the date of the individual's last departure from the United States. Section 212(a)(9)(C)(ii) of the Act; *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). To avoid inadmissibility under section 212(a)(9)(C)(i) of the Act, it must be the case that the Applicant's last departure was at least ten years ago, the Applicant has remained outside the United States, *and* U.S. Citizenship and Immigration Services has consented to the Applicant's reapplying for admission. In the present matter, the Applicant is in the United States, and she must depart and remain outside of the United States for ten years to be eligible to apply for the exception to inadmissibility under section 212(a)(9)(C)(i) of the Act.

On appeal, the Applicant also asserts that she is eligible for *nunc pro tunc* approval of her application for permission to reapply for admission. Precedent from the Board allows *nunc pro tunc* approval in limited circumstances where a grant of permission to reapply for admission would eliminate the only ground of inadmissibility and thereby effect a complete disposition of the case. *See Matter of Garcia-Linares*, 21 I&N Dec. 254 (BIA 1996); *Matter of Roman*, 19 I&N Dec. 855, 859 (BIA 1988); *Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). However, here the Applicant was found inadmissible on multiple grounds, including unlawful presence under section 212(a)(9)(B)(i) of the Act, and this inadmissibility has not been waived.[2] Because granting permission to reapply for admission would not eliminate her only ground of inadmissibility, she is not eligible for consideration of *nunc pro tunc* approval of her Form I-212.

As noted by the Director, the Applicant was found inadmissible and ineligible for adjustment of status before U.S. Citizenship and Immigration Services. Therefore, no purpose would be served in adjudicating her application for permission to reapply as it would not result in her adjustment of status to lawful permanent resident.[3] The appeal of the denial of the Form I-212 will therefore be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.

[2] An application for permission to reapply for admission is denied, in the exercise of discretion, to a foreign national who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (Reg'l Comm'r 1964).

[3] We recognize that individuals who currently reside in the United States may seek conditional approval of a Form I-212 prior to their departure from the United States under the regulation at 8 C.F.R. § 212.2(j). The record fails to establish that the Applicant is seeking conditional permission to reapply for admission prior to departing the United States.