U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16032112

Date: APR 11, 2022

Appeal of New York, New York Field Office Decision

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

The Applicant seeks permission to reapply for admission to the United States. U.S. Citizenship and Immigration Services (USCIS) may grant permission to reapply for admission to the United States in the exercise of discretion for those who establish their eligibility.

The Director of the New York, New York Field Office denied the Form I-212, concluding that the Applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act, for reentering the United States without inspection after being ordered removed and not remaining outside of the United States for 10 years as required by the Act.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision.

Section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), provides that any 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. 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 10 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.

On [redacted] 1996, the Applicant was ordered deported and reentered without inspection shortly thereafter. He has remained in the United States since his reentry without inspection and is seeking conditional approval of the application under the regulation at 8 C.F.R. § 212.2(j).

The Applicant asserts that he is not inadmissible under section 212(a)(9)(C)(i)(II) because his reentry occurred prior to April 1, 1997, and we agree.[1] Therefore, we find it appropriate to remand the matter

[1] Copies of the Applicant's 1996 W-2 and pay statements sufficiently establish that his reentry occurred in 1996.

to the Director to determine whether the Applicant merits permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act as a matter of discretion.[2] Noncitizens 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 noncitizen's reapplying for admission.

ORDER: The decision of the Director is withdrawn.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

[2] We note that the Applicant's prior deportation order was reinstated on [redacted] 2013. Section 241(a)(5) of the Act permits the Secretary of Homeland Security to reinstate a prior removal order against a noncitizen who illegally reenters the United States after having been removed or having departed voluntarily under an order of removal. An individual is not eligible and may not apply for relief under the Act when it is determined that he or she reentered the United States illegally after having been removed and a prior order of removal is reinstated.