U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18275696

Date: APR. 19, 2022

Motion on Administrative Appeals Office Decision

Form I212, Application for Permission to Reapply for Admission

The Applicant seeks permission to reapply for admission to the United States under section 212(a)(9)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii), because he is inadmissible for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year. He is also inadmissible for entering the United States without being admitted after having been ordered removed from the United States.

The Director of the St. Thomas, Virgin Islands Field Office denied the application, concluding that the record did not establish that the Applicant met the requirements for consent to reapply for admission. We dismissed the subsequent appeal.

The matter is now before us on a motion to reconsider. In the motion, the Applicant states that he is eligible for consent to reapply for admission.

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 review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We do not consider new facts or evidence in a motion to reconsider.

Section 212(a)(9)(C)(i) of the Act provides that an alien 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 re-embarkation 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 has been found inadmissible under section 212(a)(9)(C) of the Act for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year, as well as after having been ordered removed from the United States. Specifically, the record shows that he entered the United States without inspection on [redacted] 2005, was immediately apprehended by U.S. Customs and Border Patrol, and was ordered removed *in absentia* on [redacted] 2006. The Applicant was removed from the United States on [redacted] 2010 and reentered the United States without inspection in March 2012. He accrued unlawful presence from [redacted] 2005, until he was removed on [redacted] 2010.

In our most recent decision on appeal, we acknowledged the Applicant's arguments concerning the errors in notices and forms relating to his detention and removal hearings, which he asserts led to his failure to appear at his hearing and thus the *in absentia* order. However, we declined to address this issue, as we noted that he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act for entering the United States without inspection after having accrued more than one year of unlawful presence. As the Applicant has remained in the United States since his entry in March 2012, we found that he has not remained outside the United States for more than 10 years and is therefore ineligible to apply for the exception to section 212(a)(9)(C) of the Act. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007).

On motion, the Applicant asserts that the approval of his Form I-601A, Application for Provisional Unlawful Presence Waiver, on December 7, 2017, waives any of his unlawful presence in the United States, and that he is therefore not inadmissible under section 212(a)(9)(C)(i)(II) of the Act. However, the provisional waiver process applies to those who are inadmissible solely due to unlawful presence under section 212(a)(9)(B) of the Act. 8 C.F.R. 212.7(e). The Applicant therefore remains inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Because he has remained in the United States since his last entry in March 2012, he has not been outside the United States for more than 10 years since departing, and thus is not eligible to apply for consent to reapply for admission to the United States.

The Applicant also repeats his claims made on appeal regarding errors and missing information on his Notice to Appear. As he has not shown that our finding regarding his inadmissibility under section 212(a)(9)(C)(i)(II) of the Act was based on an incorrect application of law or policy, we need not address whether he is also inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

The Applicant has not demonstrated that our prior decision was based upon an incorrect application of law or policy and was incorrect based upon the record of proceeding at the time it was filed. Accordingly, the application remains denied.

ORDER: The motion to reconsider is dismissed.