U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16898703

Date: APR. 20, 2022

Appeal of Salt Lake City, Utah 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 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 she is inadmissible after having been unlawfully present in the United States for an aggregate period of more than one year and then entered the United States without being admitted.

The Director of the Salt Lake City, Utah Field Office, denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the Applicant was inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for reentering the United States without being admitted after accruing more than one year of unlawful presence. Specifically, the Director determined that the Applicant did not meet the requirements for permission to reapply for admission because she has not remained outside the United States for 10 years since her last departure and had filed her application while in the United States.

The matter is now before us on appeal. The burden of proof in these proceedings rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

Section 212(a)(9)(C)(i)(I) of the Act provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than 1 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 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.

The record reflects that the Applicant departed the United States in January 2000, after having accrued one year of unlawful presence in the aggregate.[1] The Applicant then entered the United States without being admitted and subsequently left the United States on or about January 10, 2003, in compliance

[1] The Applicant's accrual of unlawful presence is not disputed.

with a grant of voluntary departure. She then remained in Mexico until March 16, 2015, when she presented herself to a United States port of entry requesting asylum. The Applicant was issued parole, valid until June 18, 2015, in order to attend her removal proceedings. She has remained in the United States since being paroled and filed her Form I-212 in September 2019.

On appeal, the Applicant asserts the Director erred in determining she did not remain outside of the United States as she remained in Mexico for over 10 years after leaving on voluntary departure. The Applicant also contends that she was permitted to file her Form I-212 in the United States because she is regarded as an arriving alien after having been paroled in the United States in 2015.

While we agree the Director erred in determining the Applicant had not remained outside of the United States for 10 years, we agree with the Director's finding that the Applicant does not meet the requirements for consent to reapply because she was in the United States when she filed her Form I-212. First, we note that the instructions for Form I-212 indicate "you may not file for consent to reapply if you are inadmissible under INA section 212(a)(9)(C) and... [y]ou are in the United States."[2] While we acknowledge the Applicant's arguments that she received parole after presenting herself to a port of entry in order to pursue a claim of asylum, the record reflects her Form I-212 was filed while she was already in the United States and after the reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory. She is therefore currently statutorily ineligible to apply for permission to reapply for admission.

ORDER: The appeal is dismissed.

[2] Instructions for Application for Permission to Re-apply for Admission Into the United States After Deportation or Removal, USCIS Form I-212, *available at*: https://www.uscis.gov/sites/default/files/document/forms/i-212instr.pdf.