U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20560846

Date: APR. 21, 2022

Appeal of Los Angeles, California Field Office Decision

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

The Applicant seeks conditional 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 for entering the United States without being admitted after having been ordered removed from the United States.

The Director of the Los Angeles, California Field Office denied the application. The Director concluded that the Applicant is statutorily ineligible to apply for permission to reapply for admission.

The matter is now before us on appeal. On appeal, the Applicant contends that she is not inadmissible under section 212(a)(9)(C)(i) of the Act.

We review the questions raised 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) 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." Under 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."

The Applicant applied for admission at a port of entry in [redacted] 1999, and presented a Form I-512 advance parole document. The inspecting officer determined that the document was fraudulent. The Applicant maintains that she believed the document to be authentic because she purchased the document from an individual who claimed to be a consular employee. The inspecting officer found the Applicant inadmissible under section 212(a)(6)(C) of the Act, because the Applicant presented false documents to the inspecting officer in an attempt to obtain an immigration benefit (entry into the United States). The Applicant departed the United States under an order of expedited removal but, a few days later, she unlawfully entered the United States without admission.

The Director denied the petition, concluding that, because the Applicant re-entered the United States without admission after her 1999 removal, and has remained in the United States, the Applicant is statutorily ineligible for permission to reapply for admission under section 212(a)(9)(C)(iii) of the Act. The Director stated that the Applicant will remain ineligible for such relief until she departs the United States and remains abroad for ten years. We agree with the Director's determination.

On appeal, the Applicant contends that she "is not inadmissible under INA §212(a)(9)(C)(i)(II)" because "she was not formally deported from the United States" "following a hearing before an immigration judge." The statute, however, does not require such a hearing. Section 212(a)(9)(C)(i)(II) plainly applies to "[a]ny alien who . . . has been ordered removed under section 1225(b)(1) of this title, section 1229a of this title, or any other provision of law." 8 U.S.C. § 1229a, section 240 of the Act, concerns removal proceedings before an immigration judge.

But 8 U.S.C. § 1225(b)(1), section 235(b)(1) of the Act, concerns expedited removals at ports of entry. That statute reads, in part: "If an immigration officer determines that an alien . . . who is arriving in the United States . . . is inadmissible under [8 U.S.C. §] 1182(a)(6)(C) . . . , the officer shall order the alien removed from the United States without further hearing or review." This language closely matches the circumstances of the Applicant's 1999 expedited removal.

The Applicant acknowledges that she "was served with the Form I-860 . . . , fingerprinted and walked back over the border." Form I-860 is a "Notice and Order of Expedited Removal." The events in 1999 constituted a removal from the United States for the purposes of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act.

The Applicant asserts that section 212(a)(9)(C)(ii) of the Act requires only the passage of ten years since her last departure, and does not require her to be outside the United States during that ten-year period. The Board of Immigration Appeals (the Board, or BIA) rejected this argument in *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). In that decision, the Board stated that a noncitizen cannot "circumvent the statutory 10-year limitation on section 212(a)(9)(C)(ii) waivers by simply reentering unlawfully before requesting the waiver. After all, it is the alien's unlawful reentry without admission that makes section 212(a)(9)(C)(i) applicable in the first place." *Id.* at 876.

On appeal, the Applicant states: "in Araceli Perez-Brizo, an unpublished BIA Decision dated 7/11/2014, the BIA held that there is no need to spend the 10-years outside of the United States. (See copy of the Decision attached hereto.)"

Unlike published decisions such as *Matter of Torres-Garcia*, unpublished decisions have no authority as precedent. Furthermore, the appellate submission in the record does not include a copy of any Board decision, and a Westlaw search of Board decisions issued on July 11, 2014 does not yield any decision matching the description provided. The Applicant has not summarized the arguments underlying the conclusions in the purported 2014 Board decision.

We note that the online filing instructions for where to file Form I-212 specify that if the "Applicant is physically present in the United States but not eligible for adjustment of status because of inadmissibility under INA section 212(a)(9)(C)," then the applicant "may not file the application until

[they] have departed the United States and until [they] have resided abroad for 10 years since [their] last departure." The instructions further indicate that such applicants who also require waivers of other grounds of inadmissibility, as is the case here, must file Form I-212 after a consular interview abroad.[1] Although the Applicant indicated on the form that she was inadmissible under section 212(a)(9)(C)(i)(II) of the Act, the Applicant disregarded these filing instructions and, instead, filed the Form I-212 with her local U.S. Citizenship and Immigration Services field office.

The Applicant asserts that the regulation at 8 C.F.R. § 212.2(i)(2) "provide[s] for a 'nunc pro tunc' I-212 waiver which allows the Applicant to apply for the waiver after having unlawfully entered the United States." The Board, however, concluded that "8 C.F.R. § 212.2 . . . cannot reasonably be construed as implementing the provision for consent to reapply for admission at section 212(a)(9)(C)(ii)" of the Act. *Matter of Torres-Garcia*, 23 I&N Dec. at 875.

The Applicant also asserts: "she is a Beneficiary of a Form I-130 Petition filed on her behalf on or before April 20, 2001; that she was physically present in the United States on December 21st, 2000 and, therefore, that she is eligible to adjust status in the United States under the grandfathering provisions of INA sec. 245(i)." *Matter of Torres-Garcia* addresses this argument as well, stating: "The official position of the [Department of Homeland Security] is that section 245(i) adjustment . . . is unavailable to recidivist immigration violators described by section 212(a)(9)(C)." *Id.* at 870 n.4.

As noted above, *Matter of Torres-Garcia* effectively addresses all of the Applicant's key arguments. On appeal, the Applicant does not cite any authority that overruled or superseded that precedent decision. The Applicant has not overcome the determination that she will remain statutorily ineligible to file Form I-212 until she remains outside the United States for ten years.

ORDER: The appeal is dismissed.

[1] *See* https://www.uscis.gov/forms/all-forms/direct-filing-addresses-for-form-i-212-application-for-permission-to-reapply-for-admission-into-the, as referenced on page 16 of the Form I-212 instructions at https://www.uscis.gov/sites/default/files/document/forms/i-212instr.pdf.