U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17322724

Date: APR. 21, 2022

Appeal of Centennial, Colorado Field Office Decision

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

The Applicant was found inadmissible for entering the United States without being admitted after having previously accrued more than one year of unlawful presence in the aggregate. Immigration and Nationality Act (the Act) section 212(a)(9)(C)(i)(I), 8 U.S.C. § 1182(a)(9)(C)(i)(I). He seeks permission to reapply for admission to the United States. Section 212(a)(9)(C)(ii) of the Act.

The Director of the Centennial, Colorado Field Office initially denied the Applicant's Form I-212, Application for Permission to Reapply for Admission (Form I-212), as a matter of discretion.[1] The Applicant filed a motion to reopen and reconsider, which the Director denied. The matter is now before us on appeal, where the Applicant challenges the propriety of the Director's decision to dismiss his motion to reopen and reconsider.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

[1] The Director also noted that in 2012 the Applicant filed a nonimmigrant visa application where he stated that he was married and provided his spouse's name. Although the Director acknowledged the Applicant's approved Form I-130, Petition for Alien Relative, he noted that the petition was filed by the Applicant's lawful permanent resident father based on the Applicant's classification as the unmarried son of a lawful permanent resident parent. Accordingly, the Director noted that the Applicant may not be entitled to a visa and therefore not entitled to approval of the I-212 "if you have no underlying visa petition." We note, however, that the validity of an approved Form I-130 is not within our purview and cannot be addressed in this proceeding.

Section 212(a)(9)(C)(i) of the Act provides that any "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."[2]

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

In denying the application, the Director explained that during a consular interview the Applicant disclosed under oath that he entered the United States without inspection in 1999, 2000, and 2002 and that his stays following these three entries resulted in the Applicant accruing, in the aggregate, more than one year of unlawful presence in the United States. The Director reasoned that as a result of having accrued more than one year of unlawful presence prior to a fourth entry without inspection in 2004, the Applicant became inadmissible under section 212(a)(9)(C)(i)(I) of the Act. The Director determined that although the Applicant remained outside of the United States for at least 10 years since his last departure from the United States and is therefore eligible to file Form I-212, the application should be denied as a matter of discretion because the unfavorable factors outweighed the favorable factors in this case.

On motion, the Applicant argued that the Director erred by combining the periods of unlawful presence he accrued during his multiple stays, pointing out that no single stay in 1999, 2000, or 2002 was for over 180 days. Although the Applicant acknowledged that he had a fourth unlawful entry, which took place in 2004 and was for over 180 days, he argued that only that entry should be counted for purposed of determining his inadmissibility, which he claimed triggered only the 10-year bar under section 212(a)(9)(B)(i)(II), rather than the permanent bar to inadmissibility under section 212(a)(9)(C)(i) of the Act.

However, the Applicant provided no legal authority in support of his assertions, which are inconsistent with the express language of the pertinent statute. As stated above, section 212(a)(9)(C)(i)(I) of the Act pertains to any "alien who has been unlawfully present in the United States *for an aggregate period* of more than one year." (Emphasis added). The Applicant admitted that his unlawful entries in 1999, 2000, and 2002 resulted in stays that lasted 150 days per stay, thus establishing that he had accrued approximately 450 days of unlawful presence prior to his unlawful entry in 2004. Although the Applicant cited to and provided a partial copy of Memorandum from Donald Neufeld, Acting Memorandum from Donald Neufeld, Acting Assoc. Dir., Domestic Ops. Directorate *et al.*, USCIS, HQDOMO 70/21.1, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Section 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(l) of the Act; Revision to and Re-designation of* Adjudicator's Field Manual (AFM) *Chapter 30.1(d) as Chapter 40.9 (*AFM *Update AD 08-03)* (May 6, 2009), https://www.uscis.gov/sites/default/files/document/memos/revision_redesign_AFM.PDF,

[2] The accrual of unlawful presence for purpose of inadmissibility determinations under section 212(a)(9)(B)(i) or 212(a)(9)(C)(i) of the Act begins no earlier than the effective date of the amendment enacting this section, which is April 1, 1997.

he did not discuss this document or establish that it supports his arguments. In fact, regarding a non-citizen who accrues more than one year of unlawful presence, the memorandum restates the statute and emphasizes that such unlawful presence, "whether accrued during a *single stay or during multiple stays*," would subject the non-citizen to a permanent bar to admissibility under section 212(a)(9)(C)(i)(I) of the Act. *Id.* at 14 (emphasis in original).

Accordingly, the Director was correct in determining that the applicant triggered a permanent bar to admissibility and thus required an approved Form I-212 in order to seek admission to the United States. In this instance, the Director determined that the Applicant's Form I-212 did not merit approval because the unfavorable factors outweighed the favorable factors, and the Applicant did not dispute that determination.[3]

In light of the above, we conclude that the Director correctly denied the Applicant's motion to reconsider. Further, because the Applicant offered no new facts, he established no basis to support a motion to reopen. We therefore also affirm the Director's dismissal of the motion to reopen.

ORDER: The appeal is dismissed.

[3]Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval is warranted as a matter of discretion. *Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973); *see also Matter of Lee*, *supra*, at 278 (finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character, and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience.")