U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17265935

Date: APR. 25, 2022

Appeal of Santa Ana, California Field Office Decision

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

The Applicant will be inadmissible upon her departure from the United States for having been previously ordered removed and seeks permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii).

The Director of the Santa Ana, California Field Office determined that the Applicant was also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, for having entered the United States without being admitted after having been expeditiously removed. As the record did not establish that the Applicant had remained outside the United States for 10 years since her last departure, the application was denied accordingly.

On appeal, the Applicant asserts that she was admitted into the United States after removal and is thus not inadmissible under section 212(a)(9)(C)(i)(II) of the Act. The Applicant further contends that she has established that she merits a favorable exercise of discretion.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), provides that any "arriving alien . . . who has been ordered removed under section 235(b)(1) [of the Act, 8 U.S.C. § 1225(b)(1),] or at the end of proceedings under section 240 [of the Act, 8 U.S.C. § 1229a,] initiated upon the arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible."

Foreign nationals 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 foreign national's reapplying for admission."

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."

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

The Applicant attempted to enter the United States with fraudulent documentation on [redacted] 1999; she was expeditiously removed on the same day. The Applicant again attempted to enter the United States with fraudulent documentation on [redacted] 1999; she was expeditiously removed on [redacted] 1999. The Applicant subsequently entered the United States on an unspecified date in July 1999, and has remained in the United States to date.

The Director concluded that the Applicant did not establish that she was inspected and admitted or paroled when she returned to the United States in July 1999, after her most recent expedited removal on [redacted] 1999. Therefore, the Director denied the Form I-212 and Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), finding the Applicant inadmissible under section 212(a)(9)(C) of the Act.[1]

On appeal, counsel[2] asserts that the Applicant is not inadmissible pursuant to section 212(a)(9)(C) of the Act. He contends that although the Applicant was not in possession of any valid entry document required by the Act in July 1999, she was allowed to enter the United States by an immigration officer at the port of entry. He maintains that because the Applicant was waved through on her last entry to the United States in 1999, this should be considered a lawful admission and she is thus not inadmissible pursuant to section 212(a)(9)(C) of the Act.

We adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments rescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

In *Matter of Quilantan*, the Board of Immigration Appeals (Board) found that in situations where the manner of entry was not in dispute, a foreign national who was waved through at the border could be considered inspected and admitted for the purpose of section 245(a) of the Act, 8 U.S.C. § 1255(a). When issuing *Quilantan*, the Board reaffirmed *Matter of Areguillan*, 17 I&N Dec. 308 (BIA 1980)

[1] The Director also determined that the Applicant was inadmissible under section 212(a)(9)(a), for her expedited removals, and under section 212(a)(6)(C) of the Act, for fraud or willful misrepresentation.

[2] The Applicant does not submit a statement on appeal addressing the issues raised by the Director, allowing her case to stand on previously submitted evidence.

(holding that foreign nationals bear the burden of establishing that they presented themselves for inspection).

Here, a review of the record indicates that on part 2 of the Form I-212, the Applicant indicated that she was inadmissible pursuant to section 212(a)(9)(C) of the Act, because she "entered or attempted to enter the United States without being admitted or paroled after having been excluded, deported or removed." On the Form I-485, the Applicant indicated in Part 3 that she was not inspected by a U.S immigration officer when she last entered the United States. She also noted that she entered as "E.W.I." On the Supplement A to Form I-485, the Applicant indicates that "I am in unlawful immigration status because I entered the United State without inspection or I remained in the United States past the expiration of the period of my lawful admission." On the Form I-765, Application for Employment Authorization, the Applicant specified that her status at last entry was "E.W.I." The Applicant did not submit additional evidence on appeal to establish a prior lawful admission in July 1999.[3] As noted above, it is the Applicant's burden to establish that she presented herself for inspection. *Id.* Her statements at the I-485 interview and in response to the Director's RFE, which are contradicted by statements previously provided in multiple immigration filings that were signed by the Applicant under penalty of perjury, as detailed above, are insufficient to meet this burden.

An individual who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply for admission to overcome this ground of inadmissibility unless the individual has been outside the United States for more than ten years since the date of the individual's last departure from the United States. Section 212(a)(9)(C)(ii) of the Act; *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). To avoid inadmissibility under section 212(a)(9)(C)(i) of the Act, it must be the case that the Applicant's last departure was at least ten years ago, the Applicant has remained outside the United States, *and* U.S. Citizenship and Immigration Services has consented to the Applicant's reapplying for admission. In the present matter, the Applicant is in the United States, and she must depart and remain outside of the United States for ten years to be eligible to apply for the exception to inadmissibility under section 212(a)(9)(C)(i) of the Act.

As noted by the Director, the Applicant was found inadmissible and ineligible for adjustment of status before U.S. Citizenship and Immigration Services. Therefore, no purpose would be served in adjudicating her application for permission to reapply as it would not result in her adjustment of status to lawful permanent resident. The appeal of the denial of the Form I-212 will therefore be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.

[3] The only evidence in support of the Applicant's contention that she was waved through by an immigration officer in July 1999 are her own statements, made orally at the I-485 interview and in writing in response to the Director's February 2020, Request for Evidence (RFE).