U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15779049

Date: APR. 26, 2022

Appeal of Queens Field Office Decision

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

The Applicant seeks advance 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 Queens, New York Field Office denied the application, concluding that the Applicant did not meet the requirements 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; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, other than an "arriving alien," who has been ordered removed under section 240 or any other provision of law, or who departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such departure or removal (or within 20 years of such date in the case of a second or subsequent removal), is inadmissible. Noncitizens 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 noncitizen's reapplying for admission.

Further, Section 212(a)(9)(C)(i)(II) of the Act provides that any noncitizen who 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 noncitizen seeking admission more than 10 years after the date of the noncitizen's last departure from the United States if, prior to the noncitizen'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 noncitizen's reapplying for admission.

II. ANALYSIS

The Applicant attempted entry into the United States on [redacted] 1996, without proper documentation using the aliases of [redacted] and [redacted] and placed in exclusion proceedings (under [redacted]). The Immigration Judge ordered the Applicant excluded on [redacted] 1996, and the Applicant was deported on [redacted] 1996.

On or about [redacted] 1999, the Applicant entered the United States without inspection and was apprehended the following day using the alias of [redacted] and placed in removal proceedings (under [redacted]). The Immigration Judge ordered the Applicant removed in absentia on [redacted] 2000. The Applicant's motion to reopen removal proceedings was denied on [redacted] 2000, and the Board of Immigration Appeals dismissed his appeal on [redacted] 2013. The Applicant has remained in the United States.[1]

As the Applicant entered the United States without inspection after having been ordered excluded and deported, the Applicant is inadmissible under section 212(a)(9)(C)(i) of the Act. Moreover, since the Applicant has not departed the United States since his last removal order, the Applicant is ineligible to file for the exception clause under section 212(a)(9)(C)(ii) of the Act. Accordingly, the appeal will be dismissed.[2]

ORDER: The appeal is dismissed.

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[1] We note that the Applicant was subsequently placed in removal proceedings under the name [redacted]. However, the Immigration Judge terminated the proceedings because he was already placed into proceedings and ordered removed under [redacted].

[2] As he was ordered removed in absentia and has not departed the United States, the Applicant is also inadmissible under section 212(a)(6)(B) of the Act, and there is no waiver for this ground of inadmissibility. Therefore, even if he were currently eligible to seek relief under the Act, no purpose would be served in granting his permission to reapply for admission, as he would remain inadmissible under section 212(a)(6)(B) of the Act until he leaves the United States and seeks admission after five years from his departure date. When an applicant will remain mandatorily inadmissible or excludable from the United States, no purpose would be served in granting an application for permission to reapply. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964); *Matter of J-F-D-*, 10 I&N Dec. 694 (Reg'l Comm'r 1963). Furthermore, as he unlawfully entered the United States without inspection after having been previously excluded and deported, the Applicant is subject to the provisions of section 241(a)(5) of the Act, in which he may not apply for any relief under the Act based on reinstatement of his prior deportation order. We also note that the Applicant's history of false identities, including using his false identities to file for asylum before an Immigration Judge, renders him inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willfully misrepresenting of a material fact, which would require a waiver under section 212(i) of the Act. Furthermore, the record reflects that the Applicant has accrued over one year of unlawful presence in the United States, deeming him inadmissible under section 212(a)(9)(B)(i)(II) of the Act once he departs and seeks admission within ten years from his departure, and a waiver for this inadmissibility under section 212(a)(9)(B)(v) of the Act would also be required.