



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 16321795

Date: APR. 26, 2022

Motion on Administrative Appeals 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 he is inadmissible for attempting to enter the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year.

The Director of the Denver, Colorado Field Office denied the Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, concluding that the evidence did not warrant a discretionary approval of the application. We summarily dismissed the Applicant's appeal. The matter is now before us on a combined motion to reopen and reconsider our decision.

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. Upon review, we withdraw our summary dismissal of the Applicant's appeal and remand the matter to the Director for the entry of a new decision.

I. LAW

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. . . and who enters or attempts to reenter the United States without being admitted is inadmissible." The accrual of unlawful presence for purpose of inadmissibility determinations under section 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.

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."

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 of the application 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).

II. ANALYSIS

The record reflects that the Applicant entered the United States without inspection in July 1993, remained here from 1993 until 2002, and then returned to Mexico. The Applicant attempted to reenter the United States without inspection in 2004, but was apprehended by immigration officials and voluntarily returned to Mexico. In 2019, a U.S. Department of State consular officer found that the Applicant was inadmissible under section 212(a)(9)(C)(i) of the Act for accruing one year or more of unlawful presence from 1993 until 2002, and then attempting to reenter the United States without being inspected and admitted or paroled in 2004.

The Director noted the inadmissibility finding and denied the Form I-212, concluding that the Applicant's initial evidence did not warrant a discretionary approval of the application.¹ While the Director's decision listed the Applicant's initial evidence, the decision did not explain the relative decisional weight given to each negative and positive factor, or explain the cumulative weight given to the negative and positive factors. *See 1 USCIS Policy Manual* E.8(D), (providing, as guidance, the requirements for "Denying Benefit Requests as a Matter of Discretion").

With the appeal, the Applicant submits new evidence and claims that he is eligible to seek permission to reapply for admission under section 212(a)(9)(C)(i) of the Act because he has remained outside the United States for more than ten years. He provides certificates from the Criminal Records Unit of the Chihuahua State Government indicating that a search of its records found no criminal information for the Applicant. The Applicant also presents letters of support from multiple family members (including an additional letter from his mother), a letter from his employer, earnings statements, a diploma from the Instituto Nacional Electoral, documentation of a pending immigrant visa with the U.S. Department of State, and financial records. Based on the evidence in the record, the Applicant has established that he has remained outside the United States for more than 10 years since his last departure and is eligible to seek permission to reapply for admission to the United States. In light of the new evidence offered on appeal, we find it appropriate to remand the matter to the Director to evaluate this documentation and to determine whether the Applicant merits a favorable exercise of discretion. The Director should consider the new evidence and weigh the unfavorable factors against the favorable factors to determine if approval of the application is warranted as a matter of discretion.

¹ The initial evidence included copies of the Applicant's birth certificate and Mexican passport, his mother's U.S. certificate of naturalization, a statement from his mother discussing her medical conditions and relationship with the Applicant, medical records for his mother, her Social Security information, and a Denver Housing Authority billing statement for his mother's residence. The Director's decision stated that the Applicant "failed to submit any evidence regarding your good moral character to include any evidence of a lack of criminal record in Mexico."

ORDER: The motion to reopen and reconsider is granted, and the decisions of the Administrative Appeals Office and the Director are withdrawn. The matter is remanded to the Director for the entry of a new decision consistent with the foregoing analysis.