U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17960554

Date: APR. 27, 2022

Appeal of Nebraska Service Center 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), as he is inadmissible for entering the United States without being admitted after having been ordered removed from the United States.

The Director of the Nebraska Service Center denied the application, concluding that the record did not establish that the Applicant was eligible for the exception under section 212(a)(9)(C)(ii) of the Act since he had not been outside of the United States for the requisite period.

The matter is now before us on appeal. In the appeal, the Applicant asserts that he is not inadmissible under section 212(a)(9)(C) of the Act.

The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(C)(i) of the Act provides that an 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."

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 re-embarkation 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. *See 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. *See 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").

II. ANALYSIS

The Applicant has been found inadmissible under section 212(a)(9)(C)(i)(II) of the Act for entering the United States without being admitted after having been ordered removed from the United States. Specifically, he first entered the United States on December 27, 1995, using a fraudulent passport. He was found inadmissible for fraud or material misrepresentation under section 212(a)(6)(C)(i) of the Act, ordered removed on [redacted] 1996, and removed from the United States on [redacted] 1996. The Applicant then entered the United States without inspection in September 2001 and departed on July 26, 2018. His immigrant visa application was refused by the U.S. Department of State (DOS) on August 27, 2018, due to findings of inadmissibility under sections 212(a)(6)(C)(i) and 212(a)(9)(C)(i)(II) of the Act.[1]

In his decision, the Director concluded that because less than 10 years had elapsed since the Applicant's last departure from the United States on July 26, 2018, he was ineligible for the exception under section 212(a)(9)(C)(i)(II) of the Act. On appeal, the Applicant first argues that he is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act because the period of unlawful presence prior to his removal occurred prior to the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which became fully effective on April 1, 1997. Pub.L. 104–208, 110 Stat. 3009 (1996). While we agree that he is not inadmissible under that provision, that was not the basis for the Director's decision.

The Applicant also asserts that he is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act because he was "in proceedings prior to the passage of IIRIRA," and therefore this provision does not apply to him. However, section 212(a)(9)(C)(i)(II) of the Act applies to noncitizens ordered removed before, on, or after April 1, 1997, and who subsequently enter or attempt to enter the United States without admission or parole any time on or after that date. *See* Memorandum from Paul Virtue, Acting Executive Associate Commissioner, INS, HQIRT 50/5.12, *Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Immigration and Nationality Act (Act)*. (June 17, 1997).[2] Because the Applicant was ordered removed in 1996 and entered without inspection in September

[1] A previous I-212 application [redacted], filed by the Applicant was denied on September 20, 2019, and we dismissed a subsequent appeal, [redacted], on July 21, 2020.

[2] The instructions to Form I-212 also specify that noncitizens ordered removed before, on, or after April 1, 1997, are inadmissible under section 212(a)(9)(C)(i)(II) if on or after April 1, 1997, they entered or attempted to enter the United States without being admitted or paroled.

2001, he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and requires permission to reapply for admission.

A noncitizen who is inadmissible under section 212(a)(9)(C) may not apply for consent to reapply for admission unless the noncitizen has been outside the United States for at least 10 years since the date of his or her last departure from the United States. *Matter of Torres-Garcia*, 23 I&N Dec. at 876; *Matter of Briones*, 24 I&N Dec. at 358-59; and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). As noted by the Director, 10 years have not elapsed since his last departure on July 26, 2018, and he is currently ineligible to seek consent to reapply for admission under section 212(a)(9)(C)(ii) of the Act. Accordingly, his application will remain denied.

ORDER: The appeal is dismissed.