U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19228515

Date: JUN. 01, 2022

Appeal of Nebraska Service Center Decision

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

The Applicant, a native and citizen of Honduras, was found inadmissible for entering the United States without being admitted after having been ordered removed from the United States and seeks permission to reapply for admission into the United States. Immigration and Nationality Act (the Act) section 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii). Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion for those who seek admission after residing abroad for 10 years following their last departure.

The Director of the Nebraska Service Center denied the application, concluding that since ten years have not yet passed since the Applicant's last departure from the United States, the Applicant is statutorily ineligible for permission to reapply for admission. The matter is now before us on appeal.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 C.F.R. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(C)(i)(II) of the Act provides that a noncitizen who has been ordered removed, and who subsequently enters or attempts to enter the United States without being admitted, is inadmissible. Under section 212(a)(9)(C)(ii) of the Act, a noncitizen may apply for an exception to this inadmissibility if at least 10 years have passed since their last departure from the United States.

II. ANALYSIS

The record indicates that the Applicant attempted to enter the United States without inspection on [redacted] 2004. He was ordered removed pursuant to Section 240 of the Act, 8 U.S.C. § 1229a, on [redacted] 2004, and he was removed on [redacted] 2004. Later in 2004, the Applicant entered the United States without inspection. He departed the United States on September 2, 2014.

In 2020, the Applicant applied for an immigrant visa as the spouse of a U.S. citizen. The U.S. Department of State found the Applicant inadmissible under section 212(a)(9)(C)(i)(II) of the Act for

entering the United States without being admitted after a previous removal. On February 2, 2020, the Applicant filed Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, seeking an exception to this ground of inadmissibility. The Director denied the application, finding that the Applicant was statutorily ineligible for relief since 10 years have not yet passed since the Applicant's last departure from the United States.

On appeal, the Applicant provides an attorney brief and affidavits regarding hardships that the Applicant's family will undergo if the requested relief is not granted.[1] The Applicant asserts that he is statutorily eligible to apply for an exception to his inadmissibility pursuant to 8 C.F.R. § 212.2, which states in pertinent part that "[a]ny alien who has been deported or removed from the United States is inadmissible to the United States unless the alien has remained outside the United States for five consecutive years since the date of deportation or removal." The Applicant argues that since five years have passed since his last departure from the United States, he is statutorily eligible for relief.

The regulation at 8 C.F.R. § 212.2 does not govern implementation of section 212(a)(9)(C)(ii) of the Act. *In re Torres-Garcia*, 23 I&N Dec. 866, 875 (BIA 2006) ("Even were we to assume that 8 C.F.R. § 212.2 did govern implementation of section 212(a)(9)(C)(ii), however, we could not interpret that regulation in a manner that is inconsistent with the plain language of the Act.") The plain language of section 212(a)(9)(C)(ii) of the Act states that its inadmissibility exception only applies to "an alien seeking admission more than 10 years after the date of the alien's last departure from the United States."

In the present case, the Applicant last departed from the United States on September 2, 2014. He may not seek permission to reapply for admission until he has remained outside of the United States for at least 10 years from the date of that last departure. Because the Applicant has not remained abroad for the requisite 10-year period, he does not meet the threshold requirement to seek permission to apply for admission under section 212(a)(9)(C)(ii) of the Act at this time. Accordingly, his Form I-212 must remain denied.

ORDER: The appeal is dismissed.

[1] We acknowledge the evidence the Applicant submitted regarding whether he merits a favorable exercise of discretion. However, since the issue of his statutory ineligibility is dispositive, we decline to reach this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).