U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17960580

Date: JUN. 3, 2022

Appeal of Nebraska Service Center Decision

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

The Applicant, who is currently residing in the Dominican Republic, 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 Nebraska Service Center denied the Form I-212, concluding that the Applicant is inadmissible under section 212(a)(9)(C)(i) of the Act for having reentered the United States without being admitted after having been removed from the United States. The Director concluded that the Applicant did not meet the requirements for obtaining consent to reapply for admission under section 212(a)(9)(C)(ii) of the Act because he has not remained outside the United States for 10 years since the date of his last departure in 2019. On appeal, the Applicant asserts that the Director incorrectly determined he was inadmissible under section 212(a)(9)(C)(i) of the Act and erroneously denied his Form 1-212.

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

A foreign national who is inadmissible under section 212(a)(9)(C)(i) of the Act may not seek permission to reapply unless they have been outside the United States for more than 10 years since the date of their last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866, 873 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C)(i) of the Act, it must be the case that the foreign national's last departure was at least 10 years ago, they have remained outside the United States, and USCIS has granted them permission to reapply for admission into the United States. *Id.*

II. ANALYSIS

The Applicant was refused an immigrant visa based on his inadmissibility under section 212(a)(9)(C)(i) of the Act. Government records indicate the Applicant was ordered removed under section 241(a)(1)(B) of the Act and actually deported on [redacted] 1992. Furthermore, our records

indicate his deportation was carried out at government expense via American Airlines flight [redacted] departing from San Juan, Puerto Rico. Our records also show that the Applicant then reentered the United States in 1999 without being admitted or paroled, and his prior deportation order was reinstated on [redacted] 2000. For a second time, he was removed to the Dominican Republic on [redacted] 2000. By his own admission, the Applicant reentered the United States a third time without being inspected and admitted or paroled.[1] Thus, the record shows he illegally entered the United States two times after having been deported in 1992. As a result, he is subject to a 10-year bar under section 212(a)(9)(C)(i). In order to apply for consent to reapply for admission under section 212(a)(9)(C)(ii) of the Act, the Applicant must first remain outside the United States for 10 years. The record establishes that the Applicant's last departure was in 2019. Because he has not remained outside of the country for 10 years, as required, he is currently statutorily ineligible to apply for permission to reapply for admission.

On appeal, the Applicant contends that because his first order of deportation included a voluntary departure date, he was not subject to reinstatement upon his second entry. This argument is flawed for several reasons. First, the plain language of section 241(a)(5) of the Act (reinstatement of removal provision) provides that a foreign national is subject to reinstatement of removal under a voluntary departure order. The reinstatement of removal provision states:

> If the Attorney General finds that a [foreign national] has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the [foreign national] is not eligible and may not apply for any relief under this Act, and the [foreign national] shall be removed under the prior order at any time after the reentry.

Section § 241(a)(5) of the Act; 8 U.S.C. § 1231(a)(5).

Second, while the Applicant's 1992 deportation order did include language that he could voluntarily depart the United States, the voluntary departure was conditioned on his paying an immigration bond to be released from immigration detention, and then depart voluntarily at no government expense. As stated earlier, our records indicate that he was removed at government expense, thus he did not comply with the terms of his voluntary departure order. Therefore, while a timely departure, using his own resources, under a voluntary departure order would have created a factual question regarding whether he was subject to reinstatement of removal in [redacted] 2000, he did not timely depart at his own expense. As such, he has not demonstrated that the U.S. government committed an error when his deportation order was reinstated upon entering the United States a second time without being inspected, admitted or paroled.[2] *Cf. Rafaelano v. Wilson*, 471 F.3d 1091 (9th Cir. 2006) (if an

[1] The Applicant disputes the Department of State (DOS) and the Director's finding that he entered the United States without inspection, admission, or parole in 2009. Instead, he claims he entered the United States without inspection, admission, or parole in 2000. However, there is no dispute that he entered the United States a third time and that he did so without inspection, admission, or parole. Thus, for purposes of our analysis, it is irrelevant whether he entered in 2000 (as he claims) or in 2009 (as DOS and the Director found).

[2] Our records indicate that the Applicant's 1992 deportation order provided that he had until June 5, 1992 to post a $1,500 bond to be released from immigration detention, and that if he did not do so before that date, he would be deported at

immigration judge grants voluntary departure and the foreign national timely departs, whether a prior order exists constitutes a factual challenge.)

III. CONCLUSION

For the above-stated reasons, the Applicant remains inadmissible under section 212(a)(9)(C)(i) of the Act until he has spent ten years outside the United States from the date of his last departure. As such, the Applicant is statutorily ineligible to apply for permission to reapply for admission at this time.

ORDER: The appeal is dismissed.

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government expense. It appears he did not pay the immigration bond, and that he remained in immigration detention until he was deported on [redacted] 1992. Therefore, he did not comply with the Immigration Judge's voluntary departure order.