U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19871212

Date: MAY 03, 2022

Appeal of Los Angeles, California Field 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)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii).[1]

Section 212(a)(9)(A)(ii) of the Act provides that any alien, other than an arriving alien described in section 212(a)(9)(A)(i), who "has been ordered removed under section 240 or any other provision of law… and who seeks admission within 10 years of the date of such departure or removal . . . is inadmissible." Foreign nationals 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 foreign national's reapplying for admission."

However, section 212(a)(9)(C)(i) of the Act also provides that any foreign national who has been ordered removed and who enters or attempts to reenter the United States without being admitted, is inadmissible. Foreign nationals found inadmissible under section 212(a)(9)(C)(i) of the Act may seek permission to reapply for admission under section 212(a)(9)(C)(ii), which provides that inadmissibility shall not apply to a foreign national who seeks admission more than ten years after the date of their last departure from the United States if the Secretary of Homeland Security consents to their reapplying for admission prior to their attempt to be readmitted. A foreign national may not apply for permission to reapply unless they have been outside the United States for more than ten years since the date of their last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *see also Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).

The Director of the Los Angeles, California field office denied the Form I-212 finding the Applicant inadmissible under section 212(a)(9)(C)(i)(II) of the Act, for reentering the United States without being admitted at some point after being removed on [redacted], 2002. The Director then found the Applicant to be currently statutorily ineligible to request permission to reapply for admission under

[1] The Applicant currently resides in the United States and is seeking conditional approval of the application under the regulation at 8 C.F.R. § 212.2(j).

section 212(a)(9)(C)(ii) of the Act because she has not shown she remained outside the United States for ten years, as required.

In a brief on appeal the Applicant contests the inadmissibility finding under section 212(a)(9)(C)(i)(II) of the Act, stating that she has not left the United States since 1988 and thus, was not removed nor did she subsequently re-enter without inspection.

The burden of proof in these proceedings rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, as the Director indicated, an immigration judge ordered the Applicant deported in [redacted] 1997 and she was removed from the United States on [redacted] 2002. Our records show the person removed on [redacted] 2002, shares biographical information identical to the Applicant (name, date of birth, and country of birth), including a stated first entry date of 1988. The Applicant presents no evidence to show this person was not her. Thus, there is no reason to believe this person was not the Applicant and her statements concerning her not being removed from the United States are not supported by her immigration records or other evidence submitted.

Furthermore, our records indicate that after this removal, the Applicant re-entered the United States in an unknown manner and on a yet to be disclosed date.[2] Given that it is the Applicant's burden to show she is eligible for the benefit sought, she must establish the manner of her re-entry and the timeframe of her re-entry, which she has not done.[3] As such, we will affirm the Director's decision that the Applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Likewise, because the Applicant has not disclosed her re-entry to the United States, we cannot determine whether she has been outside the country for 10 years and is now statutorily eligible to apply for permission to reapply for admission under section 212(a)(9)(C)(i)(II) of the Act. As a result, the application will remain denied and the determination that she is statutorily ineligible to apply for permission to reapply for admission will not be disturbed. The Applicant has not shown that she re-entered the United States with inspection and that she spent 10 years outside the country before her re-entry.

ORDER: The appeal is dismissed.

[2] Our records indicate the Applicant returned to the United States no later than December 2016, when she appeared at an Application Support Center to have her biometrics collected.

[3] Notably, we have no record of the Applicant entering the United States with inspection.