U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19263549

Date: MAY 4, 2022

Appeal of Las Vegas, Nevada Field Office Decision

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

The Applicant seeks conditional 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 entering 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 Las Vegas, Nevada Field Office denied the application. The Director concluded that the Applicant had not shown that he is statutorily eligible for the relief sought, or that a favorable exercise of discretion is warranted.

The matter is now before us on appeal. On appeal, the Applicant states that the favorable discretionary factors outweigh the unfavorable factors, and that he "has potential avenues for status in the near future and may be eligible for a waiver."

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

I. LAW

The Applicant is seeking permission to reapply for admission to the United States and has been found inadmissible for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year.

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 . . . and who enters or attempts to reenter the United States without being admitted is inadmissible." Under 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. *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 entered the United States unlawfully (without parole, inspection, or admission) in February 2004. In December 2009, after nearly six years of unlawful presence, the Applicant departed the United States, without first obtaining advance parole or any other means of lawful re-entry. In [redacted] 2010, he made two attempts to reenter the United States unlawfully. On the first attempt, he was apprehended by officers of U.S. Customs and Border Protection (CBP) and returned to Mexico. His second attempt at unlawful entry was successful, and the Applicant has remained in the United States since late February 2010.

Following an arrest in 2014 for driving under the influence of alcohol, U.S. Immigration and Customs Enforcement began removal proceedings against the Applicant. He was released on bond in [redacted] 2014, and less than three weeks later, he married a United States Citizen. The Applicant was ordered removed in [redacted] 2016. In August 2017, his spouse filed an immigrant relative petition on his behalf.

The Director denied the I-212 application, citing two grounds. First, the Director discussed various favorable and unfavorable factors, such as the Applicant's family ties and his criminal record, and determined that the unfavorable factors outweighed the favorable factors. Second, the Director found that the Applicant reentered the United States without admission after more than a year of unlawful presence, and is therefore inadmissible under section 212(a)(9)(C)(i)(I) of the Act, and is statutorily ineligible for the relief that a Form I-212 application provides until he remains outside the United States for ten years.

We agree with the Director's conclusions regarding the second ground for denial (concerning inadmissibility under section 212(a)(9)(C)(i)(I) of the Act). Because this ground, by itself, determines the outcome of the appeal, we need not discuss the favorable and unfavorable discretionary factors.[1]

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

On appeal, the Applicant states that he "believes he falls within the exception to INA 212(a)(9)(b) to allow approval of his I-212 Application as a matter of favorable discretion." Section 212(a)(9)(B) of the Act concerns unlawful presence in the United States, with waiver provisions set forth at section 212(a)(9)(B)(v) of the Act. These provisions do not address or cure inadmissibility under section 212(a)(9)(C) of the Act.

The Applicant cites various factors that might be favorable in a discretionary determination, such as his family ties in the United States. As the Director explained, these discretionary factors cannot overcome the statutory bar that requires the Applicant to remain outside the United States for ten years before he can file a Form I-212 application. Only at that time can the favorable and unfavorable factors be weighed against one another. There exists no applicable waiver for this ten-year bar.[2]

The Applicant contends that he "has potential avenues for status in the near future," because "he is planning on filing a Motion to Reopen his [removal] case," and he claims to be "one of the eligible class members of a nationwide class action settlement agreement in Mendez Rojas et al. . . . No. 2: 16-cv-01024-RSM (W.D. Wash. Nov. 4, 2020)," which would enable him to apply for other relief. The burden of proof is on the Applicant to establish eligibility for immigration benefits; he cannot meet this burden simply by stating his intention to file motions or applications in the future.[3] The present facts before us in the record of proceeding establish that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, and will not be eligible to seek relief by filing Form I-212 until he spends ten years outside the United States.

Given the ten-year bar imposed by section 212(a)(9)(C)(ii) of the Act, a discussion of favorable and unfavorable discretionary factors would serve no purpose. We will dismiss the appeal because the Applicant is statutorily ineligible at this time for the relief he seeks.

ORDER: The appeal is dismissed.

[2] Section 212(a)(9)(C)(iii) establishes waiver provisions for self-petitioners under the Violence Against Women Act. The Applicant does not claim or establish that he falls into this category.

[3] Regarding the Applicant's removal proceeding, we note that he appealed the removal order first to the Board of Immigration Appeals and then to the U.S. Court of Appeals for the Ninth Circuit, both of which ultimately affirmed both the removal order and the conclusion that the Applicant is not eligible for cancellation of removal.