U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18763550

Date: MAY 4, 2022

Appeal of Los Angeles, California Field Office Decision

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

The Applicant, a native and citizen of Mexico, who is currently in the United States, 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), after having been previously removed from the United States. The Director of the Los Angeles, California Field Office denied the application, concluding that the Applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for reentering the United States without being admitted after having been removed, and has remained in the United States since 1999. The Director determined that the Applicant was ineligible to seek an exception under section 212(a)(9)(C)(ii) of the Act because she has not remained outside the United States for at least 10 years since her last departure, as required.

On appeal, the Applicant does not contest that she was removed from the United States but asserts that she did not reenter "illegally," and therefore, she is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *See 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

Section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), provides that any noncitizen who "has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible." An exception to this inadmissibility is available in cases where the noncitizen is seeking admission more than 10 years after the date of their last departure from the United States and the Secretary of Homeland Security has consented to that individual reapplying for admission. Section 212(a)(9)(C)(ii) of the Act.

II. ANALYSIS

The record indicates that on [redacted] 1999, the Applicant was expeditiously removed from the United States under section 235(b)(1) of the Act for attempting to enter the United States without inspection, and was thereafter barred from entering the United States for five years. In a statement submitted in support of the Form I-212, the Applicant asserted that in "late 1999," the car, in which she was a passenger, was "waived in at the border."[1] She claims that she has not left the United States since that entry.

However, U.S. Citizenship and Immigration Services' system records reveal that the Applicant attempted to reenter the United States without inspection twice after her expedited removal on [redacted] 1999. On [redacted] 1999, the Applicant was apprehended by an immigration agent for attempting to enter the United States without inspection. On [redacted] 2000, the Applicant was again apprehended by an immigration agent for attempting to reenter the United States without inspection. The record further reveals that the Applicant provided a false name and date of birth to immigrations officials during her [redacted] 2000 encounter.[2] It appears that the Applicant reentered the United States without inspection at an unknown time and place after her last encounter with the immigration agent on [redacted] 2000.

On appeal, the Applicant states that she returned to Mexico in late 1999 to visit her grandfather who was ill, but subsequently attempted to enter the United States without inspection, and was removed. She asserts that she reentered the United States "the same month" after being waived in at the border, and therefore, she was admitted. However, the Applicant's claimed admission in "late 1999" does not explain her apprehension on [redacted] 2000, under a false name and date of birth for being in the United States without inspection and her reentry without inspection after that day. We find the Applicant's assertions on appeal unsupported.

The Applicant triggered the bar under section 212(a)(9)(C)(i)(II) of the Act when she reentered the United States multiple times without inspection after her expedited removal on [redacted] 1999. There is no evidence that she has departed the United States since her last entry. Based on this evidence, we conclude that the Applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been removed from the United Sates and subsequently reentering the United States without being admitted. As stated, noncitizens who are inadmissible under section 212(a)(9)(C)(i)(II) of the Act may not apply for consent to reapply for admission unless they have remained outside the United States for at least 10 years from the date of their last departure from the United States. Matter of Torres-Garcia, 23 I&N Dec. 866, 873 (BIA 2006); Matter of Briones, 24 I&N Dec. 355, 365 (BIA 2007). Because the Applicant has not remained outside the United States for the requisite 10-year period, she is currently statutorily ineligible to apply for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act. Accordingly, the Applicant's Form I-212 must remain denied.

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[1] The Applicant provided inconsistent dates in the Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application), regarding the date of her last entry into the United States. On the adjustment application filed in 2018, she stated that her last entry into the United States was on December 25, 1988; however, on the adjustment application she filed in 2020, she changed her last entry date to "end of 1999."

[2] Willfully misrepresenting a material fact renders an applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

As this determination is dispositive of the Applicant's appeal, we decline to reach and hereby reserve the Applicant's arguments concerning her inadmissibility under section 212(a)(9)(A) of the Act and eligibility for permission to reapply for admission on that basis. 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).

ORDER: The appeal is dismissed.