U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20387650

Date: MAY 05, 2022

Appeal of San Antonio, Texas Field Office Decision

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

The Applicant, who is currently outside the United States and consular processing as an immigrant visa applicant, 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).

Section 212(a)(9)(C)(i) of the Act provides that any foreign national who has been unlawfully present in the United States for an aggregate period of more than one year and who enters or attempts to enter 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).

Here, the Applicant, who does not contest that he is inadmissible under section 212(a)(9)(C) of the Act, entered the United States without inspection in 1996, was granted voluntary departure and departed the United States in 2001. Thus, he was unlawfully present in the United States for more than one year, from April 1, 1997, the date the unlawful presence provisions were enacted, to 2001. The Applicant then attempted to re-enter the United States without inspection in 2003. He was returned to Mexico on [redacted] 2004. These events reflect that the Applicant, who is not in the United States, has now remained outside the United States for 10 years. Thus, although the Applicant is inadmissible under section 212(a)(9)(C) of the Act, he is statutorily eligible to apply for permission to reapply for admission to the United States.

The Director of the San Antonio, Texas Field Office, who does not dispute the facts above, denied the application as a matter of discretion, finding the Applicant inadmissible to the United States under section 212(a)(6)(E)(i) of the Act, for alien smuggling.

On appeal, the Applicant asserts that he is not inadmissible for alien smuggling and that the denial of his Form I-212 was an abuse of discretion.

Because the Applicant is residing abroad and applying for an immigrant visa, the U.S. Department of State (DOS) makes the final determination concerning admissibility and eligibility for a visa. Here, a consular officer did not determine that the Applicant was inadmissible under section 212(a)(6)(E)(i) of the Act, for knowingly assisting, abetting, or aiding an individual to enter, or try to enter, the United States in violation of law.[1] Because DOS has not found the Applicant inadmissible under section 212(a)(6)(E)(i) of the Act, we find it appropriate to remand the matter for the Director to evaluate the submitted evidence and consider whether the Applicant has established that he merits a favorable exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[1] Notably, as the Applicant indicates on appeal, the people he transported were already inside the United States (in [redacted] Texas) and he was not involved in their entry to the United States, thus it does not appear that he assisted, abetted, or aided the individuals to enter or try to enter the United States in violation of the law. See *Parra-Rojas v. Holder*, 747 F. 3d 164 (3rd Cir. 2014).