U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18110441

Date: MAY 5, 2022

Motion on Administrative Appeals Office Decision

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

The Applicant is inadmissible for having previously been ordered removed and for entering the United States without being admitted after his removal, and he seeks permission to reapply for admission to the United States under sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(A)(iii) and 1182(a)(9)(C)(ii).

The New York District Director denied the Form I-212, Application for Permission to Reapply for Admission, concluding that the Applicant does not meet the requirements for consent to reapply for admission because 10 years have not elapsed since the date of his last departure from the United States. We summarily dismissed the Applicant's appeal because he did not submit an appellate brief or additional evidence. The matter is again before us on a motion to reconsider. On motion, the Applicant submits a brief and no additional evidence, and contends that he should be granted permission to reapply for admission in the exercise of discretion.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This office reviews 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 motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought.

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, other than an "arriving alien," who has been ordered removed under section 240 of the Act, 8 U.S.C. § 1229a, or any other provision of law, or who departed the United States while an order of removal was outstanding, and who seeks

admission within 10 years of the date of such departure or removal, is inadmissible. Noncitizens 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) of the Act 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 noncitizen's reapplying for admission.

Section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than one year, or has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible. Noncitizens found inadmissible under section 212(a)(9)(C) 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 noncitizen seeking admission more than 10 years after the date of last departure from the United States if, prior to the 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 noncitizen's reapplying for admission.

II. ANALYSIS

The issue presented on motion is whether the Applicant should be granted permission to reapply in the exercise of discretion. The Applicant is statutorily ineligible for permission to reapply for admission to the United States because he has not remained outside the United States for at least 10 years since his last departure.

On motion, the Applicant disputes any finding that he willfully represented any material fact in order to procure a visa or other documentation or benefit pursuant to 212(a)(6)(C) of the Act. He also states that he has maintained lawful status, pursuant to his grant of temporary protected status (TPS), since 2002. He concludes by asserting that he submitted a truly meritorious case meriting favorable discretion. The Applicant does not contest the Director's finding that he is inadmissible under section 212(a)(9)(C)(ii).

The record reflects that the Applicant entered the United States without authorization in October 1991 and was subsequently apprehended. In [redacted] 1997, the Applicant was ordered removed and later departed the United States. The Applicant subsequently reentered the country without authorization in or around October 2000. The record reflects that the Applicant has remained in the United States to date. He is thus inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, for his removal, and pursuant to section 212(a)(9)(C) of the Act, for entering the United States without being admitted after having been ordered removed.

As noted, the Applicant does not contest the Director's finding that he is inadmissible under section 212(a)(9)(C)(i)(II). Furthermore, the Applicant has not remained outside the United States for 10 years. He is thus currently ineligible to apply for the exception to his inadmissibility under section 212(a)(9)(C) of the Act.[1] The Applicant has not provided new facts or submitted new affidavits or

[1] No purpose would be served in considering the Applicant's request for permission to reapply under section 212(a)(9)(A)(iii) of the Act, for having been ordered removed, as he would remain inadmissible under section 212(a)(9)(C)(i) of the Act.

other documentary evidence demonstrating his eligibility for the requested benefit. Further, he has not established our prior decision was based on an inaccurate application of law or USCIS policy or that it was incorrect based on the evidence in the record of proceeding. The application will therefore remain denied.

ORDER: The motion to reconsider is dismissed.