U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20263330

Date: MAY 09, 2022

Appeal San Bernardino, 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)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii), because he is inadmissible after having been ordered removed and then entered the United States without being admitted.

The Director of the San Bernardino, 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 being ordered removed. Specifically, the Director determined that the Applicant's claim that he is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act because he last entered the United States prior to April 1, 1997, was not supported by any evidence and also contradicted by his previous filing of Form I-212 on August 17, 2000, indicating he was living in Mexico at the time as well as evidence that the Applicant then reentered the United States at some time after his filing.[1] The Director then concluded that the Applicant did not meet the requirements for permission to reapply for admission because he has not remained outside the United States for 10 years since his last departure.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

Section 212(a)(9)(C)(i) of the Act provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than 1 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 ten 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

[1] Because the unlawful presence grounds of inadmissibility were created with the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), entry without admission or parole, or attempted entry without admission or parole, must have occurred after April 1, 1997.

foreign contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

The record reflects that the Applicant initially entered the United States without inspection in 1985. He was placed into deportation proceedings in [redacted] 1994, was ordered deported to Mexico in [redacted] 1994, and was deported to Mexico on [redacted] 1994. USCIS records indicate the Applicant filed a Form I-212 on August 17, 2000, seeking permission to reapply for admission to the United States after having been deported. The Applicant submitted a statement, dated January 1999, claiming he had been residing in Mexico since he had been deported from the United States. The Applicant's most recent Form I-212, filed in October 2020, indicates he currently resides in the United States but claims he last entered the United States on December 23, 1994.

On appeal, the Applicant asserts that he is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act because he last entered the United States, without being admitted, before April 1, 1997. The Applicant submits additional evidence indicating he was living in the United States prior to April 1, 1997, such as copies of his California driver licenses, a California marriage license, and a Social Security Administration statement showing his years working in the United States from 1988 to 2013. He also provided a new signed declaration whereby he claims he has not left the United States since reentering in 1994 and a notario named [redacted] had provided false information in his Form I-212 filed in 2000 but had he known [redacted] was providing false information he would not have signed the form.

Here, the Applicant has not met his burden to show that he has remained in the United States since 1994 and did not actually live in Mexico in 2000 as he indicated in his Form I-212 statement. While the Applicant claims the preparer of his Form I-212 filed in 2000 provided false information, the Applicant does not specify what information was false. The Form I-212 contains accurate information such as the date of the Applicant's deportation order, his file number with USCIS, as well as his length of residence in the United States. The Applicant signed the form indicating his address was in [redacted] Mexico, and that he planned to apply for his visa in-person at the American consulate in Juarez, Mexico.[2] The Applicant's California driver licenses indicate he obtained his first license on August 22, 1997, which he then renewed on August 3, 2001. His marriage certificate indicates he was married in California on [redacted] 1998. However, these documents do not show that the Applicant was in the United States prior to April 1, 1997 as claimed on appeal. While the submitted Social Security Administration statements indicate the Applicant earned wages in the United States from 1994 – 2013, these statements do little to clarify whether he lived in Mexico in 2000 and subsequently reentered the United States before filing his present Form I-212.

While we acknowledge the Applicants arguments that entry into the United States without admission prior to April 1, 1997, does not apply to section 212(a)(9)(C)(i)(I) of the Act, the record reflects that the Applicant was outside of the United States in 2000 and then reentered the United States without admission before filing his present Form I-212 in October 2020 and therefore is inadmissible under section 212(a)(9)(C)(i)(I) of the Act. Since the Applicant filed his Form I-212 seeking permission to reapply for admission under section 212(a)(9)(C)(ii) while already in the United States, he is statutorily ineligible to apply for permission to reapply for admission.

[2] The Applicant was also the beneficiary of a Form I-130, Petition for Alien Relative, filed in May 2001, indicating the Applicant's address abroad was in [redacted] Mexico.

ORDER: The appeal is dismissed.