



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 19824110

Date: MAY 12, 2022

Appeal of Wichita, Kansas Field Office Decision

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

The Applicant will be inadmissible upon her departure from the United States for having been previously ordered removed and seeks permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The Director of the Wichita, Kansas Field Office denied the application. The Director determined that the Applicant was also inadmissible pursuant to section 212(a)(9)(C) of the Act, for having entered the United States without being admitted after having been ordered removed. The Director concluded that as the Applicant had not remained outside the United States for 10 years since her last departure, the application must be denied.

On appeal the Applicant contends that she should be granted permission to reapply for admission in the exercise of discretion.

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

Section 212(a)(9)(A)(ii) of the Act provides that any noncitizen, other than an “arriving alien” described in section 212(a)(9)(A)(i), who has been ordered removed or 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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of a noncitizen convicted of an aggravated felony) 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) 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) 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 foreign contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

The Applicant currently resides in the United States and is seeking conditional approval of the application under the regulation at 8 C.F.R. § 212.2(j) before she departs, as she will be inadmissible upon her departure due to her prior removal order. The approval of the application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if she fails to depart.

II. ANALYSIS

The issue presented on appeal 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 she has not remained outside the United States for at least 10 years since her last departure.

The record reflects that the Applicant entered the United States without being admitted in March 2001 and was subsequently apprehended in [] 2003. The Applicant was ordered removed in [] 2003 and departed the United States pursuant to the removal order in [] 2003. The Applicant subsequently reentered the country without being admitted in around October 2003, as detailed by the Applicant on the Form I-212, Application for Permission to Reapply for Admission. The record reflects that the Applicant has remained in the United States to date. She is thus inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, for her removal and section 212(a)(9)(C)(i)(II) of the Act, for entering the United States without being admitted after having been ordered removed.¹

A noncitizen who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the noncitizen has been outside the United States for more than 10 years since the date of the noncitizen's last departure from the United States. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the Applicant's last departure was at least ten years ago, the Applicant has remained outside the United States, and U.S. Citizenship and Immigration Services has consented to the Applicant's reapplying for admission. The Applicant has not remained outside the United States for 10 years after her last departure in [] 2003. She is thus currently ineligible

¹ The record appears to establish that the Applicant is also inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, for entering the United States without being admitted after accruing more than one year of unlawful presence in the United States prior to departure. As detailed above, the Applicant entered the United States without being admitted in March 2001, departed pursuant to a removal order in [] 2003, and subsequently re-entered the United States without being admitted in October 2003, and has remained in the United States to date.

to apply for the exception to her inadmissibility under section 212(a)(9)(C) of the Act.² The application for permission to reapply for admission must remain denied.

ORDER: The appeal is dismissed.

² 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 she would remain inadmissible under section 212(a)(9)(C) of the Act.