U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22924604

Date: NOV. 10, 2022

Appeal of Hartford 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)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), based on her inadmissibility under section 212(a)(9)(A)(ii) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant permission to reapply for admission to the United States in the exercise of discretion for those who establish their eligibility. The Hartford Field Office Director denied the Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (application), concluding the Applicant was also inadmissible under section 212(a)(9)(C) of the Act, and no purpose would be served in adjudicating the application on the merits.

On appeal, the Applicant submits a brief and additional evidence contending the Director erred in applying section 212(a)(9)(C) to her case. The Applicant bears the burden of demonstrating 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*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we conclude that a remand is warranted in this case.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a foreign national, 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. Those found inadmissible under section 212(a)(9)(A) 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 their reapplying for admission.

Approval of an application is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *See Matter of Lee*, 17 I&N Dec. 275, 278–79 (Reg'l Comm'r 1978). Factors to be considered in

determining whether to grant a Form I-212 application include the basis for the prior deportation; the recency of deportation; length of residence in the United States; an applicant's moral character; an applicant's respect for law and order; evidence of an applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to an applicant or others; and the need for an applicant's services in the United States. *See Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973).

Section 212(a)(9)(C) of the Act provides that any foreign national 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. Those found inadmissible under section 212(a)(9)(C) 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 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 their reapplying for admission.

II. ANALYSIS

In 1994, the Applicant entered the United States without inspection, admission or parole, then was ordered removed *in absentia* in 1998, but did not depart the country. During those removal proceedings, the Applicant was charged as an "other alien." *See* section 212(a)(9)(A)(ii). Immigration authorities subsequently apprehended her and removed her from the United States in [redacted] 2008. In December 2015, the Applicant presented herself to an immigration officer at a port of entry. During that process, a U.S. Customs and Border Protection officer determined the Applicant had a credible fear of persecution if returned to her home country, and she was paroled into the United States under section 212(d)(5)(A) of the Act and was found inadmissible under section 212(a)(7)(A)(i)(I) as an immigrant who was not in possession of a valid immigrant visa.

During this process in 2015, the Applicant was an "arriving alien" as described under section 212(a)(9)(A)(i) of the Act, which is reflected on her April 25, 2017, Form I-862, Notice to Appear. *See* the definition of an "arriving alien" at 8 C.F.R. § 1.2; *Leng May Ma v. Barber*, 357 U.S. 185, 188–189 (1958) (explaining that although a parolee is allowed to physically enter the United States, they remain "in theory of law" at the port of entry).

After a series of events, but while still in removal proceedings, the Applicant filed this application seeking an exception to inadmissibility under section 212(a)(9)(A). In April 2021, the Director denied this application concluding she was inadmissible under section 212(a)(9)(C).[1] The Director also denied the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, on the same date as this application. Even though the Applicant was then in removal proceedings, the Director held jurisdiction over the adjustment application as the Applicant was an "arriving alien" and the exceptions to jurisdiction listed at 8 C.F.R. § 1245.2(a)(1)(ii) were not met. Finally, in 2021 an Immigration Judge administratively closed the Applicant's removal proceedings.

[1] The Director did not specifically state which section 212(a)(9)(C) ground applied to the Applicant.

Within the appeal brief, the Applicant claims the Director erred in stating she illegally reentered the United States without inspection, admission, or parole in December 2015. The Applicant claims by extension of that error, the Director incorrectly found she was inadmissible under section 212(a)(9)(C). Ultimately, we agree with this position.

Section 212(a)(9)(C) of the Act contains two independent provisions, each that serve as what is considered to be a permanent bar to attaining LPR status. Each provision contains a specific precursor situation, which are both present in this case: (1) a foreign national has been unlawfully present in the United States for an aggregate period of more than 1 year; or (2) one who has been ordered removed under any provision of law. These two provisions are triggered by the successor event, which is when someone enters or attempts to reenter the United States without being admitted. It is this successor event that is lacking from the Applicant's case. She did not make an entry without being admitted, nor did she attempt one. Instead, according to the Form I-213, Record of Deportable/Inadmissible Alien, the Applicant "attempted to enter the United States via the [redacted] Port of Entry in [redacted] Texas via the primary pedestrian lanes by claiming credible fear." Based on the facts as stated in this decision, the Applicant is not inadmissible under any provision of section 212(a)(9)(C).

Nevertheless, it appears the Applicant does require this application, as she is inadmissible as an "other alien" under section 212(a)(9)(A)(ii)(II). The Applicant's original removal order from 1998 was based on her entry without inspection (i.e., as an "other alien" and not as an "arriving alien"). The removal order was executed in 2008 and section 212(a)(9)(A)(ii)(II) required that she not seek admission to the United States within 10 years of her departure. But before those 10 years had elapsed, the Applicant again sought admission in 2015.

Although section 212(d)(5)(A) provides that a parole is not an admission, it also indicates the Secretary's designee may use their discretion to parole into the country temporarily "any alien applying for admission to the United States." From this statutory language, we conclude a foreign national presenting themselves to an immigration officer at a port of entry is applying for, or seeking, admission. Also, the USCIS Policy Manual provides the following guidance regarding parole:

> *Definition and Scope*
>
> A noncitizen is paroled if the following conditions are met:
>
> - They are seeking admission to the United States at a port of entry; and
> - An immigration officer inspected them as an "alien" and permitted them to enter the United States without determining whether they may be admitted into the United States.

7 *USCIS Policy Manual* B.2(A)(3), https://www.uscis.gov/policymanual. This squarely fits within the Applicant's fact pattern. Even though a parole is not an admission, the Applicant is inadmissible under section 212(a)(9)(A)(ii)(II) because she was seeking admission when she presented herself at the port of entry in 2015, and that event was within the 10-year bar to seek admission. The Applicant, therefore requires an approval of the exception clause under section 212(a)(9)(A)(iii).

As the Applicant is not inadmissible under section 212(a)(9)(C), we find it appropriate to remand the matter to the Director to determine whether the Applicant merits permission to reapply for admission under section 212(a)(9)(A)(iii) as a matter of discretion, which will include a review of other possibly applicable inadmissibility grounds. In particular, her most recent entry reflected she was inadmissible under section 212(a)(7)(A)(i)(I) of the Act.

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