U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27165045

Date: AUG. 10, 2023

Appeal of New York City, New York Field Office Decision

Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal

The Applicant, who is currently in the United States, 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), after having been previously ordered removed.

The Director of the New York City, New York Field Office denied the Form I-212, concluding that the Applicant's entry without inspection, the subsequent removal order, and related inadmissibility outweighed the positive factors in his case. The matter is now before us on appeal.

On appeal, the Applicant submits a brief and asserts that the positive equities, including his close family ties in the United States, unusual hardship to himself and others, payment of taxes, and employment history outweigh the negative factors identified by the Director.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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 will dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(i) of the Act provides in pertinent part that any noncitizen who has been ordered removed from the United States under section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1), and who again seeks admission within five years of such removal (or within 20 years 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. A noncitizen who is inadmissible under that section of the Act may seek permission to reapply for admission if prior to the date of the noncitizen's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission. Section 212(a)(9)(A)(iii) of the Act.

Section 212(a)(9)(C)(i)(II) of the Act provides in relevant part that a noncitizen who has been ordered removed under section 235(b)(1) of the Act or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible. There is an exception to this inadmissibility if a noncitizen is seeking admission more than 10 years after the date of their last departure from the United States and the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission. Section 212(a)(9)(C)(ii) of the Act.

II. ANALYSIS

The Applicant is currently in the United States. He has requested an immigrant visa abroad and seeks permission to reapply for admission before he departs from the United States. The issue on appeal is whether the Applicant has established that he merits a grant of such permission in the exercise of discretion. We have reviewed the entire record, as supplemented on appeal, and conclude that he has not.

The record reflects that in [redacted] 2009, the Applicant was apprehended by U.S. Customs and Border Protection officers. He was determined to be inadmissible to the United States as an immigrant not in possession of a valid entry document, and ordered expeditiously removed from the United States pursuant to section 235(b)(1) of the Act. He was removed in [redacted] 2009, and advised that he was prohibited from entering, attempting to enter, or being in the United States for a period of five years from the date of removal. In July 2021, the Applicant filed the instant Form I-212, representing that he reentered the United States without inspection in July 2009 and has been residing in the country since that time.

As an initial matter, while the Applicant indicated that he is seeking conditional approval of his Form I-212 pursuant to the regulation at 8 C.F.R. § 212.2(j), this regulation applies only to noncitizens whose departure will execute an outstanding order of removal, and who have not yet triggered inadmissibility under section 212(a)(9)(A) of the Act.[1] Because the Applicant was removed from the United States in [redacted] 2009, and returned to the United States within the five-year inadmissibility period, he is currently inadmissible under section 212(a)(9)(A)(i) of the Act and therefore does not meet the criteria for advance permission to reapply for admission.

Furthermore, although not specifically addressed by the Director, because the Applicant had been ordered removed under section 235(b)(1) of the Act, and subsequently entered the United States without being admitted, he is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

As stated, individuals who are inadmissible under section 212(a)(9)(C) of the Act may not seek permission to reapply for admission until they have remained outside of the United States for at least 10 years from the date of their last departure. *Matter of Torres-Garcia*, 23 I&N Dec. 866, 873 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355, 365 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).

[1] *See* 8 C.F.R. § 212.2(j) (providing, in relevant part that a noncitizen whose departure will execute an order of removal shall receive a conditional approval depending upon their satisfactory departure).

Thus, to meet the threshold requirement for seeking permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act, the Applicant must show that his last departure from the United States was at least 10 years ago and that he has remained outside the United States for at least 10 years before filing his Form I-212.

The Applicant has not demonstrated that he satisfies the above conditions, as he provided no evidence that he left the United States at any time after his last entry in July 2009, and that he remained abroad for the requisite 10 year period before filing the instant Form I-212. He therefore has not established that he is statutorily eligible to seek permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act at this time.

Consequently, as the Applicant is barred from admission to the United States under section 212(a)(9)(C)(i)(II) of the Act, there is no constructive purpose in evaluating whether he would merit permission to reapply for admission as a matter of discretion when all positive and negative factors are considered. *See Matter of Martinez-Torres*, 10 I&N Dec. 776, 776-77 (Reg'l Comm'r 1964) (stating that denial of an application for permission to reapply for admission is proper, as a matter of administrative discretion, where a noncitizen is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application).

In conclusion, the Applicant is inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act and currently ineligible to seek an exception to this inadmissibility. As a result, he is barred from admission to the United States, and his Form I-212 therefore will remain denied.

ORDER: The appeal is dismissed.