U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27189905

Date: AUG. 10, 2023

Appeal of Atlanta, Georgia 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 section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii).

The Director of the Atlanta, Georgia Field Office denied the Form I-212, concluding that the Applicant did not establish, as required, that permission to reapply for admission was warranted in the exercise of discretion. Specifically, the Director determined that the Applicant was inadmissible under section 212(a)(6)(C)(ii) of the Act (for falsely claiming to be a U.S. citizen), a ground for which there is no waiver available, and section 212(a)(6)(C)(i) of the Act (for fraud or misrepresentation). The Director further found that the Applicant otherwise did not merit a favorable exercise of discretion because his criminal history and disregard for immigration and state laws outweighed the positive factors in his case. The matter is now before us on appeal.

On appeal, the Applicant submits additional evidence, contests the Director's inadmissibility findings, and reasserts eligibility.

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)(ii) of the Act provides in relevant part that a noncitizen who has been ordered removed, or who departed the United States while an order of removal was outstanding, is inadmissible for 10 years after the date of such departure or removal. Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion. Section 212(a)(9)(A)(iii) of the Act.

Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act. There is a discretionary waiver of this inadmissibility under section 212(i) of the Act available to a spouse, son, or daughter of a United States citizen or a lawful permanent resident.

Section 212(a)(6)(C)(ii) of the Act, in turn, provides that a noncitizen who, on or after September 30, 1996, falsely represents, or has falsely represented, themselves to be a citizen of the United States for any purpose or benefit under the Act or any other Federal or State law is inadmissible. Unlike section 212(a)(6)(C)(i) of the Act, there is no waiver available for a noncitizen who is inadmissible under this section of the Act. *See* section 212(a)(6)(C)(iii) of the Act.[1]

II. ANALYSIS

The issues on appeal are (1) whether the Applicant is inadmissible on the grounds identified by the Director and (2) whether he has demonstrated that he merits permission to reapply for admission as a matter of discretion.

We have reviewed the entire record and conclude that it supports the Director's finding of the Applicant's inadmissibility under section 212(a)(6)(C)(ii) of the Act. Because there is no waiver available for a false claim to U.S. citizenship, the Applicant is permanently barred from admission to the United States, and we need not address at this time whether the Applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, or evaluate all positive and negative factors in his case to make a discretionary determination.

A. Relevant Facts and Procedural History

The record reflects that the Applicant was initially admitted to the United States in 2000 as a nonimmigrant visitor (B-2), and subsequently applied for asylum. He was determined to be ineligible for asylum and placed in removal proceedings in 2003. In [redacted] 2007, while in removal proceedings, the Applicant divorced his spouse and married a U.S. citizen. In July 2007, the Applicant's U.S. citizen spouse filed a Form I-130, Petition for Alien Relative (visa petition), on his behalf, and the Applicant simultaneously filed a Form I-485, Application to Register Permanent Residence or Adjust Status. He withdrew his asylum request, conceded removability and requested permission to voluntarily depart the United States in lieu of removal. In August 2007 an Immigration Judge granted the Applicant's request for voluntary departure until December 31, 2007, with an alternate order of removal to Zimbabwe if the Applicant failed to depart by that date. The Applicant did not depart, and remained in the United States. After the U.S. Immigration and Customs Enforcement (ICE) issued a Warrant of Removal in [redacted] 2008, the Applicant filed a motion to reopen the removal proceedings, but the Immigration Judge denied the motion and the Board of Immigration Appeals dismissed the Applicant's appeal of that decision in 2013.

[1] We note that section 212(a)(6)(C)(ii)(II) of the Act provides for an exception to this inadmissibility if each natural or adoptive parent of the noncitizen is or was a citizen (whether by birth or naturalization), the noncitizen permanently resided in the United States prior to attaining the age of 16, and the noncitizen reasonably believed at the time of making such representation that they were a citizen. There is nothing in the record to suggest that the Applicant meets these criteria.

The record further shows that in [redacted] 2012, the Applicant was apprehended at the [redacted] port of entry as a passenger on a flight arriving from [redacted] United Kingdom. He applied for admission to the United States by presenting a Form I-94, Arrival/Departure Record listing his name and date of birth. When a U.S. Customs and Border Protection (CBP) officer asked for the Applicant's passport, the Applicant responded that he had a passport, but that the passport was not his. He then presented a U.S. passport issued to another individual, who the Applicant claimed was his friend; he explained that he took the passport without his friend's knowledge, and used it to travel to the United Kingdom and attempt to seek asylum there.[2] The CBP officer determined that the Applicant was inadmissible, in part for fraud or misrepresentation, and for falsely claiming to be a U.S. citizen. The officer determined further that the Applicant was not considered to have departed from the United States, as the documents he presented indicated that he was refused asylum by the United Kingdom authorities and never made a legal entry into the country.[3] As the Applicant remained under an ICE-issued Order of Supervision at the time, he was released from CBP custody, and referred to a local Enforcement and Removal Operations office for further proceedings.

B. Basis for Seeking Permission to Reapply for Admission Unclear

As a preliminary matter, the record does not establish a basis upon which the Applicant is seeking permission to reapply for admission to the United States. While the Director considered the Applicant's eligibility for conditional approval of the Form I-212 pursuant to the regulation at 8 C.F.R. § 212.2(j) before he travels abroad,[4] the record does not establish that the Applicant intends to depart from the United States. Rather, the Applicant specifically indicated on the Form I-212 that he would seek lawful permanent resident status as a spouse of a U.S. citizen through adjustment in the United States and not through consular processing. The Applicant does not claim on appeal that his circumstances have changed, and that he now has an immigrant visa pending with the U.S. Department of State and is asking for permission to reapply for admission prior to departing the United States to obtain that visa.

Furthermore, although the Applicant filed the instant Form I-212 in conjunction with his adjustment of status application, the Director administratively closed the adjustment application concluding that because the Applicant was in removal proceedings USCIS was without jurisdiction to consider his adjustment of status request. As the Applicant provides no evidence that his removal proceedings have since been terminated, or his removal order vacated, he remains ineligible to adjust his status before USCIS.[5]

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[2] The documents related to that asylum claim reflect that the Applicant was refused entry to the United Kingdom after the immigration officer confirmed that the Applicant was not the rightful owner of the U.S. passport he presented at inspection.

[3] *See e.g., Matter of T-*, 6 I&N Dec. 638, 639-40 (BIA 1955) (explaining that that in order for there to be a recognized departure from the United States, there must be an "entry" into another country, and without such an "entry" into another country, it cannot be said that a noncitizen has departed the United States).

[4] The approval of the Applicant's Form I-212 under these circumstances would be conditioned upon his departure from the United States and would have no effect if he failed to depart.

[5] We further note that as the Applicant has not yet departed the United States pursuant to the removal order, he is not currently inadmissible under section 212(a)(9)(A) of the Act for having departed the United States after being ordered removed.

Consequently, as the Applicant does not claim and the record does not show that he has an alternative basis for seeking admission to the United States, no purpose would be served in granting him permission to reapply for admission at this time.

C. Determination of Inadmissibility under Section 212(a)(6)(C)(ii) Not Overcome

As stated, the Director determined that the Applicant falsely claimed to be a U.S. citizen when he traveled abroad and returned to the United States with another individual's U.S. passport, and that he was therefore inadmissible under section 212(a)(6)(C)(ii) of the Act.

On appeal, the Applicant avers that this determination was in error, because he never willfully misrepresented himself to a U.S. Government official as an impostor and, after the United Kingdom authorities denied his asylum request, he flew back to the United States and presented himself for inspection under his true name.

We acknowledge the Applicant's assertions, but they are not sufficient to overcome the finding of his inadmissibility under section 212(a)(6)(C)(ii) of the Act.

For a noncitizen to be inadmissible based on false claim to U.S. citizenship, the record must show that: (1) the noncitizen made a representation of U.S. citizenship; (2) the representation was false; and (3) the noncitizen made the false representation for any purpose or benefit under the Act or any other federal or state law. *See generally* 8 *USCIS Policy Manual* K.2, https://www.uscis.gov/policy-manual (providing an overview of inadmissibility determination). Furthermore, a noncitizen does not have to make the claim of U.S. citizenship to a U.S. government official exercising authority under the immigration and nationality laws; rather a claim to any other federal, state, or local official, or even to a private person is sufficient to trigger inadmissibility, so long as the noncitizen falsely claims to be a citizen of the United States "for any purpose or benefit" under the Act or any other federal or state law. *See generally id.* at K.2(D)(1)-(2).

Here, the Applicant testified before CBP that he used his friend's U.S. passport to travel abroad to obtain asylum in another country. Moreover, the record includes photocopies of the Applicant's American Airlines ticket and boarding pass issued under the name of the U.S. citizen whose passport he used to obtain these documents to be able to travel to the United Kingdom and return to the United States. Consequently, as the record reflects that the Applicant falsely represented himself to be a U.S. citizen by using his friend's identity and U.S. passport for the purpose of obtaining the necessary travel documents and establishing that he was eligible to travel from the United States to the United Kingdom and back *as a U.S. citizen*,[6] he is inadmissible under section 212(a)(6)(C)(ii) of the Act. The fact that upon arriving in the United States the Applicant ultimately sought admission under his true identity does not change this determination.

[6] See U.S. Customs and Border Protection, *U.S. citizens-Documents needed to enter the United States and/or to travel internationally*, https://help.cbp.gov (providing, in relevant part, that U.S. citizens departing from or entering the United States by air are required to present a valid U.S. passport to board an international flight).

D. Favorable Exercise of Discretion Not Warranted

The Applicant asserts that he merits permission to reapply for admission as a matter of discretion, and explains that there are mitigating circumstances that lessen the impact of his noncompliance with the voluntary departure and removal orders and his arrests for domestic violence and driving under the influence of alcohol. He states that his spouse suffers from a chronic condition that requires his daily assistance and that his Form I-212 should be approved in view of his longtime residence and strong family ties in the United States. We acknowledge the Applicant's assertions, and the additional evidence he submits on appeal including documents concerning his spouse's medical condition and his criminal history.

However, 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. *See Matter of Martinez-Torres*, 10 I&N Dec. 776, 776-77 (Reg'l Comm'r 1964).

As discussed, the Director determined that the Applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act, and the Applicant has not overcome this determination on appeal. Consequently, as the Applicant is permanently barred from admission to the United States on that basis, there is no constructive purpose in evaluating whether he would otherwise merit permission to reapply for admission as a matter of discretion when all positive and negative factors are considered because it would not change the outcome.

Because the Applicant's inadmissibility under section 212(a)(6)(C)(ii) of the Act is dispositive of his appeal, we decline to reach and hereby reserve his appellate arguments regarding his inadmissibility under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.