U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26982426

Date: AUG. 30, 2023

Appeal of Boston, Massachusetts Field Office Decision

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

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), for having been ordered removed. *See* section 212(a)(9)(A)(ii) of the Act. The Director of the Boston, Massachusetts Field Office denied the application, concluding that the record did not establish that the Applicant was eligible to seek consent to reapply for admission because he was also inadmissible for having reentered the United States without inspection and admission or parole after being ordered removed, he was currently in the United States, and more than 10 years had not elapsed since his departure in November 2012. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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.

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, 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. 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) of the Act if, prior to the date of the 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)(C) of the Act provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than one 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 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 the noncitizen's reapplying for admission.

As addressed in the Director's decision, U.S. Citizenship and Immigration Services (USCIS) records indicate the Applicant first entered the United States without inspection in December 2004. The Applicant was placed into removal proceedings following apprehension by immigration authorities near the border with Mexico. He was scheduled for a hearing before an Immigration Judge in March 2005, but the Applicant failed to appear for that hearing and was ordered removed from the United States in his absence. In February 2012, the Applicant's removal proceedings were reopened, and he was granted permission to voluntarily depart on or before June 14, 2012. If he failed to do so, the grant of voluntary departure would convert to a final order of removal. The Applicant did, in fact, fail to depart within the allotted time, and his grant of voluntary departure converted to a final order of removal. USCIS records indicate the Applicant subsequently departed the United States on November 30, 2012, executing the final order of removal.

In [redacted] 2014, the Applicant married his spouse, who filed a Form I-130, Petitioner for Alien Relative, on the Applicant's behalf. The Form I-130 indicates the Applicant last entered the United States without admission or inspection, and USCIS records do not include any indication the Applicant was inspected and admitted or paroled into the United States after his departure in November 2012. Based on these facts, the Director found the Applicant inadmissible under section 212(a)(9)(C)(i)(II) of the Act for entering the United States without inspection after being ordered removed. The Director also concluded the Applicant was inadmissible under section 212(a)(9)(A)(ii) of the Act as a noncitizen who departed the United States under a final order of removal and seeks admission within 10 years of the date of that departure. Finally, the Director also determined the Applicant was inadmissible under section 212(a)(9)(C)(i)(I) of the Act as a noncitizen who has been unlawfully present in the United States for an aggregate period of more than one year and enters or attempts to reenter without admission or parole.

On appeal, the Applicant argues his request for permission to reapply was incorrectly denied because he has never departed the United States since his initial entry in 2004. In support of this assertion, the Applicant has provided a statement from himself and his spouse, two written statements from individuals who saw him regularly during the relevant period, a transaction history showing money transfers during the relevant time, receipts for a flight booked in the Applicant's name for November 30, 2012, and pictures of the Applicant from the relevant time. We have considered the record, including the new evidence submitted on appeal, and it is not sufficient to establish by a preponderance of the evidence the Applicant did not depart and re-enter the United States without admission and inspection or parole. The Applicant has provided a copy of a plane ticket issued in his name for a departure from the United States on November 30, 2012, and USCIS records confirm he did depart the country on that date. He has not provided sufficient evidence to overcome those records. While he has submitted photographs of himself with date stamps, we have no way of confirming where or when these were taken, and they are not sufficient to meet his burden of proof to establish that he is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Because the Applicant has not – nor does he claim to have – remained outside the United States for the requisite 10-year period, he is statutorily barred from seeking permission to reapply for admission at this time. Accordingly, there is no purpose served in evaluating whether the Applicant would warrant such permission pursuant to

section 212(a)(9)(A)(iii) of the Act, as he is currently inadmissible and ineligible for admission to the United States on other grounds. His Form I-212 therefore remains denied.

ORDER: The appeal is dismissed.