U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24342793

Date: FEB. 07, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant, a citizen of Mexico, seeks permission to reapply for admission to the United States under section 212(a)(9)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii), because he is inadmissible for entering, and attempting to enter the United States, without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year.

The Director of the Nebraska Service Center denied the application, concluding that the Applicant did not establish his eligibility for the benefit sought because the record lacked sufficient evidence showing he has resided outside of the United States for 10 years since his last departure. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant submits new evidence and contends that he has remained in Mexico since 2009.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

A noncitizen who has been unlawfully present in the United States for 1 year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i) of the Act. A noncitizen is deemed to be unlawfully present in the United States if present after the expiration of the period of authorized stay or if present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act.

Section 212(a)(9)(C)(i) of the Act provides that a noncitizen who "has been unlawfully present in the United States for an aggregate period of more than one year. . . and who enters or attempts to reenter the United States without being admitted is inadmissible." The accrual of unlawful presence for purpose of inadmissibility determinations under section 212(a)(9)(B)(i) or 212(a)(9)(C)(i) of the Act

begins no earlier than the effective date of the amendment enacting this section, which is April 1, 1997.

Pursuant to section 212(a)(9)(C)(ii) of the Act, there is an exception for any "alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's 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 alien's reapplying for admission."

Approval of an application for permission to reapply 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. Matter of Lee, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. Matter of Tin, 14 I&N Dec. 371 (Reg'l Comm'r 1973).

II. ANALYSIS

The record reflects that the Applicant, a citizen of Mexico, entered the United States without inspection in 1985. He returned to Mexico in 2001 and reentered the United States without inspection in 2002. He returned to Mexico in June 2009, and in [redacted] 2009, he was apprehended by immigration officials upon attempting to reenter the United States and voluntarily returned to Mexico.

In 2016, a U.S. Department of State consular officer found that the Applicant was inadmissible under section 212(a)(9)(C)(i)(I) of the Act for accruing one year or more of unlawful presence from April 1997 to 2002, and reentering the United States without being inspected and admitted or paroled in 2002. The Director noted the inadmissibility finding and determined that the Applicant did not establish his eligibility for permission to reapply for admission because the record contained insufficient evidence demonstrating that he has remained outside the United States for 10 years.

On appeal, the Applicant submits new evidence and asserts that he is eligible to seek permission to reapply for admission under section 212(a)(9)(C)(i) of the Act because he has remained in Mexico since 2009. Specifically, the Applicant submits, inter alia, the following documentation:[1] (1) voting credentials issued in 2009 by the Federal Electoral Institute of Mexico; (2) a medical history record reflecting medical appointments attended by the Applicant in Mexico between August 2011 and November 2016; (3) photocopies of the Applicant's Mexican driver's licenses – one issued in March 2012, and the second issued in April 2016; (4) a photocopy of the Applicant's passport issued in March 2015; (5) a January 2017 medical exam report; (6) an August 2018 medical clinic report; (7) international money transfer receipts reflecting transfers from the United States to the Applicant in

[1] We note that the Applicant has not provided full and complete translations for all documents submitted on appeal. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. Id.

Mexico – in 2014, 2019, 2021, and 2022. Based on the evidence in the record, the Applicant has established that he has remained outside the United States for more than 10 years since his last departure and is eligible to seek permission to reapply for admission to the United States.

In light of the new evidence submitted on appeal, we find it appropriate to remand the matter to the Director to determine in the first instance whether the Applicant merits a favorable exercise of discretion.

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