



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 24400903

Date: FEB. 13, 2023

Appeal of San Juan, Puerto Rico Field Office

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

The Applicant was found inadmissible for entering the United States without being admitted after having accrued more than one year of unlawful presence prior to his departure from the United States, and he 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).

The Director of the San Juan, Puerto Rico Field Office denied the application. The Director determined that the Applicant was inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act, for having entered the United States without being admitted after having accrued more than one year of unlawful presence prior to his departure from the United States. The Director concluded that as the Applicant had not remained outside the United States for 10 years since his last departure, he was not currently eligible for relief under the Act. The matter is now before us on appeal.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter de novo. *See 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)(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 foreign national seeking admission more than ten 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 foreign national's reapplying for admission.

The record reflects that the Applicant entered the United States without being admitted in December 2005 and was subsequently apprehended in 2010. The Applicant voluntarily departed the United States pursuant to a voluntary departure order in January 2010. The Applicant subsequently reentered

the United States without being admitted in October 2012, as detailed by the Applicant on the Form I-212, Application for Permission to Reapply for Admission. The record reflects that the Applicant has remained in the United States to date. He thus inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, for entering the United States without being admitted after having accrued more than one year of unlawful presence in the United States prior to his departure.

As detailed above, a noncitizen who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the noncitizen has been outside the United States for more than 10 years since the date of the noncitizen's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the Applicant's last departure was at least ten years ago, the Applicant has remained outside the United States, and U.S. Citizenship and Immigration Services has consented to the Applicant's reapplying for admission. The Applicant has not remained outside the United States for 10 years after his last departure in January 2010. He is thus currently ineligible to apply for the exception to his inadmissibility under section 212(a)(9)(C) of the Act. The application for permission to reapply for admission must remain denied.

ORDER: The appeal is dismissed.