U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18940964

Date: JAN. 5, 2023

Appeal of Los Angeles, California Field Office Decision

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

The Applicant, who was previously ordered removed from the United States and reentered without inspection following removal, seeks advance permission to reapply for admission 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).

The Director of the Los Angeles, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission into the United States Following Deportation or Removal (Form I-212), concluding that the Applicant is not currently abroad and filing for this benefit without having remained outside of the United States for at least ten years since his last departure. The matter is now before us on appeal.

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 any noncitizen who has been ordered removed or 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 who are inadmissible under section 212(a)(9)(A)(ii) of the Act, and who have not remained outside the United States for a continuous period of 10 years, may seek an exception to this inadmissibility by requesting and obtaining permission to reapply for admission. Section 212(a)(9)(A)(iii) of the Act.

Noncitizens who reentered or attempted to reenter the United States without admission after being ordered deported, excluded, or removed are permanently inadmissible. Section 212(a)(9)(C)(i)(II) of the Act. An exception to this inadmissibility exists, however, for those noncitizens who seek admission more than 10 years after their last departure from the United States and, who, prior to their return, request and obtain permission to reapply for admission. Section 212(a)(9)(C)(ii) of the Act.

For those noncitizens who establish their statutory eligibility to file an application to reapply for admission under section 212(a)(9)(A)(iii) or section 212(a)(9)(C)(ii) of the Act, approval of the application is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval is warranted as a matter of discretion. *Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978).

II. ANALYSIS

The Applicant, a native and citizen of El Salvador, states that he entered the United States in 2005 without being inspected and admitted and later in 2006 a removal order was entered in absentia when the Applicant failed to appear for his scheduled hearing. However, the Applicant remained in the United States until [redacted] 2010, when he was removed pursuant to the 2006 order of removal, which. The Applicant states that in March 2010, he re-entered without inspection and admission, or parole and has continuously remained in the United States since that time.

The Director concluded that the Applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and is statutorily ineligible to apply for permission to reapply for admission to the United States because he did not remain outside the United States for 10 years after his last departure, as required by section 212(a)(9)(C)(ii) of the Act.

On appeal, the Applicant argues that the Director cited cases involving facts that are substantially different from those in this matter in that the applicants in the cited caselaw sought an adjustment of status and filed their respective Form I-212 applications "significantly earlier than the 10 years required by statute." The Applicant highlights that he, on the other hand, did not file his Form I-212 until more than 10 years had passed since his departure in January 2010. However, the Applicant does not dispute that he reentered the United States without inspection in March 2010, in violation of section 212(a)(9)(C)(i)(II) of the Act. Moreover, the Applicant does not dispute that after his reentry in 2010 he continued to reside in United States and has not remained outside of the United States for 10 years.

As noted, section 212(a)(9)(C)(ii) of the Act provides for an exception to permanent inadmissibility under section 212(a)(9)(C)(i)(II) of the Act. However, a noncitizen who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply for admission unless they have been outside the United States for more than 10 years since the date of their last departure from the United States. The instructions to Form I-212, at pages 2 and 3, state that noncitizens who are inadmissible under section 212(a)(9)(C) of the Act are not eligible to file a Form I-212 for relief under section 212(a)(9)(C)(ii) if they are in the United States or if they have not been physically outside the United States for more than 10 years since the date of their last departure.[1] Thus, contrary to the Applicant's arguments on appeal, merely departing the United States, and then reentering shortly thereafter without waiting at least 10 years prior to filing the Form I-212 is not sufficient to qualify for relief under section 212(a)(9)(C)(ii) of the Act if the applicant does not remain outside the United States for 10 years.

[1] *See* form instructions at https://www.uscis.gov/sites/default/files/document/forms/i-212instr.pdf; *see also* 8 C.F.R. § 103.2(a)(1), which incorporates the form instructions into the regulations.

The Applicant in this case re-entered the United States in March 2010 just a few months after having been removed and he has not been outside the United States for 10 years since the date of his last departure in [redacted] 2010. Accordingly, the Applicant is permanently inadmissible under section 212(a)(9)(C)(i)(II) of the Act and will not be eligible to seek consent to reapply for admission unless and until he departs the United States and remains outside the country for at least 10 years.

In addition, as discussed earlier, the Applicant failed to appear for a hearing in 2006 and was ordered removed in absentia. Although not stated in the Director's decision and thus not a basis for our determination in this matter, the Applicant's failure to appear at a removal proceeding would result in his being barred from admissibility for five years following departure from the United States. Section 212(a)(6)(B) of the Act. Going forward, in addition to the ground above, the Applicant would have to address this ground of inadmissibility, or alternatively, demonstrate "reasonable cause" for his failure to appear at the removal hearing. *Id.*

Lastly, the instructions to Form I-212, at page 2, state that one of the prerequisites for filing the Form I-212 is that the filing party must be "[a]n applicant for an immigrant visa." In the instant matter, the Applicant states that in 2012 he married a U.S. citizen who later filed a Form I-130, Petition for Alien Relative, on his behalf. However, the record shows that the petition was withdrawn in May 2014 pursuant to a written request by the Applicant's spouse. Although not discussed in the Director's decision, the withdrawal of the Form I-130 indicates that the appellant is not an applicant for an immigrant visa and thus no purpose would be served in approving his Form I-212. There is no evidence that the Applicant has another pending immigrant petition that might form the basis of an immigrant visa.

Regardless, because the Applicant has not remained outside of the United States for at least 10 years since his last departure, he is ineligible for an exception to permanent inadmissibility under section 212(a)(9)(C)(i)(II) of the Act. Accordingly, his application must be denied for this reason.

ORDER: The appeal is dismissed.