U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26480842

Date: JUNE 13, 2023

Appeal of St. Thomas, U.S. Virgin Islands 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 previously ordered deported. *See* section 212(a)(9)(A)(ii) of the Act.

The Director of the St. Thomas, U.S. Virgin Islands Field Office denied the application, concluding that the Applicant did not establish eligibility for the benefit sought. On appeal, the Applicant submits additional documentation and contends that the Director erred in the decision to deny the application. 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, as explained below, we will remand the matter to the Director for the entry of a new decision.

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 continuous territory, the Secretary of Homeland Security has consented to the noncitizen'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 is warranted as a matter of discretion. *Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978

The Applicant is a native and citizen of Mexico who entered the United without authorization in July 1989; he was subsequently apprehended and placed in deportation proceedings. The Applicant was ordered deported and left the United States pursuant to the deportation order days later. The Applicant reentered the United States without authorization in 1990 and has remained in the United States to date. The issue presented on appeal is whether the Applicant should be granted approval of his application for permission to reapply in the exercise of discretion. After considering the record in its

entirety, including documents submitted on appeal, we find that the matter should be remanded to the Director for the entry of a new decision.

In the decision to deny the Applicant's request for approval of his application for permission to reapply for admission, the Director determined that pursuant to "212(9)(A)" of the Act, the Applicant was ineligible to apply for consent to reapply because he had not established that he had remained outside the United States for a 10-year period since his deportation. As correctly noted by the Applicant on appeal, "212(9)(A)" is "not a statute within the INA." The Applicant further asserts that if the Director meant to cite to section 212(a)(9)(C) of the Act, said section does not apply to him because he was deported and subsequently reentered the United States before April 1, 1997. We agree. 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 1 year, or has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible. Section 212(a)(9)(C)(i)(II) applies to those noncitizens ordered deported or removed before or after April 1, 1997, and who enter or attempt to reenter the United States without being admitted any time on or after April 1, 1997.[1] In this case, the Applicant was ordered deported from the United States but subsequently reentered the United States without authorization prior to April 1, 1997. The Applicant is thus not inadmissible under section 212(a)(9)(C) of the Act. Nevertheless, the Applicant remains inadmissible under section 212(a)(9)(A) of the Act, for his 1989 deportation.

Considering the Applicant is not subject to inadmissibility pursuant to section 212(a)(9)(C), we find it appropriate to remand the matter for the Director enter a new decision on the merits of the Applicant's application for permission to reapply for admission.

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

[1] *See generally* USCIS Policy Memorandum HQDOMO 50/5.12, *Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Immigration and Nationality Act (Act)* (June 17, 1997), https://www.uscis.gov/sites/default/files/document/memos/revision_redesign_AFM.PDF.