U.S. Citizenship and Immigration Services

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

In Re: 25276072

Date: MAR. 8, 2023

Appeal of San Juan, Puerto Rico Field Office Decision

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

The Applicant, a native and citizen of the Dominican Republic, was found inadmissible for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year and seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii). Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion for those who seek admission after residing abroad for 10 years following their last departure.

The Director of the San Juan, Puerto Rico Field Office (Director) denied the application. The Director concluded that the Applicant did not meet the requirements for consent to reapply because he had not remained outside the United States for the requisite time since his last departure.

The matter is now before us on appeal. On appeal, the Applicant reasserts his eligibility for permission to reapply. 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)(C)(i)(I) renders inadmissible any foreign national who enters or attempts to reenter the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year. Section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), provides for an exception to section 212(a)(9)(C)(i) inadmissibility in the exercise of discretion for those who seek admission after residing abroad for 10 years following their last departure.

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). 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, 373-74 (Reg'l Comm'r 1973).

## II. ANALYSIS

The issues presented on appeal are whether the Applicant is statutorily eligible for permission to reapply for admission into the United States and whether his application should be granted in the exercise of discretion.

### A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(9)(C)(i)(I) of the Act for entering 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 Applicant was also found inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for one year or more and seeking readmission within 10 years of his last departure.

On appeal, the Applicant concedes that he is inadmissible under section 212(a)(9)(B)(i)(II), for unlawful presence. He argues however, that his Form I-601A, Application for Provisional Unlawful Presence Waiver was approved, and thus his inadmissibility for unlawful presence in the United States has been cured. Additionally, the Applicant disputes the Director's determination that he "[did] not meet the requirements for consent to reapply because [he] did not depart the United States after accruing one year of unlawful entry," noting that he departed the United States to attend his consular interview in the Dominican Republic.

The record indicates the Applicant attended a consular interview at the U.S. Embassy in Santo Domingo, Dominican Republic in April 2018. During his interview, the Applicant confirmed that he entered the United States without inspection or admission in 2002, and remained until 2005. He further confirmed that he reentered the United States without inspection or admission in 2008 and remained until 2018, when he departed to attend his consular interview. The Applicant is therefore inadmissible to the United States under section 212(a)(9)(C)(i)(I) of the Act, for having been unlawfully present in the United States for an aggregate period of more than one year and subsequently entering the United States without being admitted.

As for the Applicant's approved Form I-601A, pursuant to section 212.7(e)(4) of Title 8 of the Code of Federal Regulations, provisional unlawful presence waivers only waive inadmissibility under section 212(a)(9)(B) of the Act, for unlawful presence. Approval of a provisional unlawful presence waiver is revoked automatically, as was the case here, when a consular officer determines that the foreign national is ineligible to receive a visa for a ground of inadmissibility other than section 212(a)(9)(B)(i)(I) or (II) of the Act. Accordingly, the Applicant remains inadmissible under section 212(a)(9)(B) of the Act for unlawful presence and section 212(a)(9)(C)(i)(I) of the Act for unlawful entry to the United States after having accrued unlawful presence of more than one year.

B. Permission to Reapply

A foreign national who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for permission to reapply unless the individual has been outside the United States for more than 10 years since the date of the individual's last departure from the United States. *See Matter of Torres Garcia*, 23 I&N Dec. 866 (BIA 2006); *see also Matter of Briones*, 24 I&N Dec. 355 (BIA 2007). Thus, to avoid inadmissibility under section 212(a)(9)(C)(i) of the Act, the Board of Immigration Appeals (BIA) has held that it must be the case that the foreign national's last departure was at least 10 years ago, the foreign national has remained outside the United States, and USCIS has granted the foreign national permission to reapply for admission into the United States.

Here, the Applicant's last departure from the United States was in April 2018. The Applicant is, therefore, statutorily ineligible to apply for permission to reapply for admission.

The Applicant has the burden of proof to demonstrate eligibility for permission to reapply for admission. The Applicant has not met that burden. Accordingly, the application will remain denied.

**ORDER:** The appeal is dismissed.