U.S. Citizenship and Immigration Services

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

In Re: 24706227

Date: MAY 24, 2023

Appeal of Los Angeles, California Field Office Decision

Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal

The Applicant seeks advance 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), because he will be inadmissible upon departing from the United States for having been previously ordered removed.

The Director of the Los Angeles, California Field Office determined that the Applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act because he departed from the United States in 2006 under the order of removal and thereafter reentered the country without being admitted. The Director then denied the Form I-212 as a matter of discretion, concluding that the Applicant was ineligible to seek an exception to this inadmissibility under section 212(a)(9)(C)(ii) of the Act and approval of his request for permission to reapply for admission would serve no purpose. The matter is now before us on appeal.

On appeal, the Applicant submits additional evidence and asserts that he never left the United States after having been ordered removed, and the Director's decision was therefore in error.

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.

Section 212(a)(9)(A)(ii) of the Act provides, in relevant part that any noncitizen (other than an "arriving alien") 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. A noncitizen who is inadmissible under section 212(a)(9)(A) of the Act and wishes to reenter United States within the inadmissibility period must obtain permission to reapply for admission before commencing travel to the United States. Section 212(a)(9)(A)(iii) of the Act.

Section 212(a)(9)(C)(i)(II) of the Act provides in pertinent part that a noncitizen who has been ordered removed under section 240 of the Act, 8 U.S.C. § 1229, or any other provision of law and who subsequently enters or attempts to reenter the United States without being admitted is inadmissible. An exception to this inadmissibility is available if the noncitizen is seeking admission more than 10 years after the date of their last departure from the United States and the Secretary of Homeland Security has consented to that noncitizen reapplying for admission. Section 212(a)(9)(C)(ii) of the Act.

The record reflects that the Applicant initially entered the United States in 2002 without being inspected and admitted or paroled and was placed in removal proceedings. In 2003, an Immigration Judge granted him voluntary departure, with an alternate order of removal to Mexico. The Applicant did not comply with the voluntary departure order and appealed the Immigration Judge's decision, but the Board of Immigration Appeals dismissed his appeal. In July 2006 the U.S. Court of Appeals for the Ninth Circuit denied the Applicant's petition for review. The Applicant subsequently filed the instant Form I-212, indicating that he intended to apply for an immigrant visa abroad and, because he was ordered removed in 2003, he was seeking advance permission to reapply for admission before departing from the United States.[1]

In denying the Form I-212, the Director explained that U.S. Citizenship and Immigration Services' (USCIS) electronic records showed that the Applicant departed from the United States on September 5, 2006, from [redacted] thus executing the removal order, and his removal proceedings were closed on that basis a year later.[2] The Director reasoned that because the Applicant was now in the United States, but did not present evidence that he was inspected and admitted or paroled following his 2006 departure, he must have returned to the United States without inspection and was therefore inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

The Applicant asserts that he never left the United States since his initial entry in 2002, and the Director erred in concluding otherwise. In support, he submits additional evidence including a letter confirming his employment with a California realty services company from 2003 until early 2017, a September 2006 letter from the State of California, Franchise Tax Board addressed to his former employer, and a 2006 employee daily attendance record, which shows that he was at work on September 5, 2006.

We have reviewed the entire record, and find no evidence that the Applicant departed the United States on September 5, 2006, or on any other date. Furthermore, as the supplemental evidence submitted on appeal points to the Applicant's presence in the United States throughout September 2006 and thereafter, the record before us does not support a conclusion that the Applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, for reentering the United States without admission after having been ordered removed.

[1] A noncitizen whose departure will execute an order of removal may, prior to leaving the United States, seek conditional approval of an application for permission to reapply for admission. 8 C.F.R. § 212.2(j).

[2] A noncitizen is considered to be "in proceedings" from the time the charging document is filed with the Immigration Court until the removal order is executed. 8 C.F.R. § 1245.1(c)(8).

Accordingly, we will remand the matter to the Director to determine whether the Applicant merits conditional approval of his request for permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act.

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