U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17960551

Date: APR. 27, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for fraud or misrepresentation of material facts.[1] The Director of the Nebraska Service Center denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that because the Applicant has also been found to be inadmissible under section 212(a)(9)(C)(i)(II) of the Act and was not yet eligible to apply for consent to reapply for admission, the waiver application should be denied as a matter of discretion.

The matter is now before us on appeal. On appeal, the Applicant contends that he is not inadmissible under section 212(a)(9)(C)(i) of the Act because he was ordered removed prior to April 1, 1997.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361.Upon *de novo* review, we will dismiss the appeal.

I. LAW

Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act. There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act. If the noncitizen demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

Section 212(a)(9)(C)(i) of the Act provides that an alien 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."

[1] The Director also determined that since the Applicant entered without being admitted or paroled in September 2001, then departed the United States on July 26, 2018, he was also inadmissible under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence of one year or more. We note that because the Applicant currently resides abroad and is applying for an immigrant visa, the U.S. Department of State makes the final determination regarding inadmissibility.

Pursuant to section 212(a)(9)(C)(ii) of the Act, there is an exception for any "alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's re-embarkation 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 alien's reapplying for admission."

II. ANALYSIS

The record shows that the Applicant entered the United States on December 27, 1995, using the passport of another person. He was found to be inadmissible under section 212(a)(6)(C)(i) for fraud or willful misrepresentation and ordered removed on [redacted] 1996. The Applicant was removed from the United States on [redacted], 1996, but entered without admission or parole in September 2001, and remained in the United States until July 26, 2018. He has not returned to the United States since. On August 27, 2018, the U.S. Consulate in Guangzhou, China found him to be inadmissible under section 212(a)(6)(C)(i) due to his use of a fraudulent passport, as well as under 212(a)(9)(C)(i)(II) of the Act for entering the United States without admission or parole after having previously been ordered removed.

The Director noted in his decision that because the Applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act, he was required to seek consent for admission to reapply for admission on Form I-212, but that he had been determined to not be eligible for the exception under section 212(a)(9)(C)(ii) because he had not spent at least 10 years outside of the United States since his last departure. *Matter of Torres-Garcia*, 23 I&N Dec. at 876; *Matter of Briones*, 24 I&N Dec. at 358-59; and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Since the Applicant would therefore remain inadmissible even if the waiver under section 212(i) of the Act were granted, the Director denied his waiver application as a matter of discretion.

On appeal, the Applicant does not contest his inadmissibility under section 212(a)(6)(C)(i) of the Act but asserts that he is not inadmissible under section 212(a)(9)(C)(i)(II) because he was ordered removed prior to April 1, 1997. However, we have already considered this argument in his appeal of the denial of his Form I-212 application, and we agreed with the Director that he is inadmissible under section 212(a)(9)(C)(i)(II) and not eligible for the exception since he has not remained outside of the United States for 10 years since his last departure. Therefore, the Director did not err in denying the waiver application as a matter of discretion, as no purpose would be served in considering the hardship to his qualifying relative under section 212(i) of the Act while he remains inadmissible under section 212(a)(9)(C)(i)(II) of the Act. The Applicant's waiver application remains denied

ORDER: The appeal is dismissed.