U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17960577

Date: JUN. 3, 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).

The Director of the Nebraska Service Center denied the Form I-601 in the exercise of discretion because even if the waiver was granted, the Applicant would remain inadmissible under section 212(a)(9)(C)(i) of the Act and he is not currently statutorily eligible for to apply for consent to reapply for admission to the United States.

On appeal, the Applicant contests his inadmissibility under section 212(a)(9)(C)(i) of the Act and contends that he has established his eligibility for the waiver. The burden of proof in these proceedings rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Any foreign national 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. There is a discretionary waiver of this inadmissibility available if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(i) of the Act.

Furthermore, any foreign national who has been ordered removed, and who enters or attempts to reenter the United States without being admitted after April 1, 1997, is inadmissible. Section 212(a)(9)(C)(i)(II) of the Act. An exception is available at section 212(a)(9)(C)(ii), but only after the foreign national has remained outside of the United States for 10 years. After 10 years, the foreign national may file Form I 212 to apply for DHS's consent to allow them to reenter the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866, 873 (BIA 2006).

II. ANALYSIS

The issues on appeal are whether the Applicant is inadmissible under section 212(a)(9)(C)(i) of the Act and whether he is therefore eligible for a waiver based on extreme hardship to a qualifying relative under section 212(i) of the Act.

Government records indicate the Applicant was deported at government expense on [redacted] 1992, via American Airlines flight [redacted] and that the departure city was San Juan, Puerto Rico. Our records show that the Applicant then reentered the United States in 1999 without being admitted or paroled, and his prior deportation order was reinstated on [redacted] 2000. He was then removed for a second time on [redacted] 2000. By his own admission, the Applicant reentered the United States a third time without being inspected and admitted or paroled.[1] Thus, the record shows he unlawfully entered the United States twice after having been deported in 1992. As a result, he is subject to the bar under section 212(a)(9)(C)(i). However, in order to apply for consent to reapply for admission under section 212(a)(9)(C)(ii) of the Act, the Applicant must first remain outside the United States for 10 years. The record establishes that the Applicant's last departure was in 2019. Because he has not remained outside of the country for 10 years, as required, he is currently statutorily ineligible to apply for consent to reapply for admission.

On appeal, the Applicant contests the Director's determination that he was subject to reinstatement in 2000, arguing that his first order was not a deportation order but rather a voluntary departure order. However, the plain language of section 241(a)(5) of the Act (reinstatement of removal provision) provides that a foreign national is subject to reinstatement of removal under a voluntary departure order. The reinstatement of removal provision states:

> If the Attorney General finds that a [foreign national] has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the [foreign national] is not eligible and may not apply for any relief under this Act, and the [foreign national] shall be removed under the prior order at any time after the reentry.

Section § 241(a)(5) of the Act; 8 U.S.C. § 1231(a)(5).

Additionally, while the Applicant's 1992 deportation order did include language that he could voluntarily depart the United States, the voluntary departure was conditioned on his paying an immigration bond and then departing voluntarily without government expense. The record indicates however that he was removed at government expense. A timely departure, using his own resources, under a voluntary departure order would have created a factual question as to whether he was subject to reinstatement of removal in [redacted] 2000. However, he did not timely depart at his own expense and therefore has not demonstrated that the U.S. government committed an error when his deportation

[1] The Applicant disputes the Department of State (DOS) and the Director's finding that he entered the United States without inspection, admission, or parole in 2009. Instead, he claims he entered the United States without inspection, admission, or parole in 2000. However, there is no dispute that he entered the United States a third time without inspection, admission, or parole, and for purposes of our analysis, it is irrelevant whether he entered in 2000 (as he claims) or in 2009 (as the DOS and Director found).

order was reinstated upon entering the United States a second time without being inspected, admitted or paroled. *Cf. Rafaelano v. Wilson*, 471 F.3d 1091 (9th Cir. 2006) (if an Immigration Judge grants voluntary departure and the foreign national timely departs, whether a prior order exists constitutes a factual challenge for purposes of reinstatement of removal.) As such, the Director did not err.

As the Applicant's last departure from the United States was in 2019 and he has not remained outside of the country for at least 10 years, as required, he is currently statutorily ineligible for permission to reapply for admission to the United States. Section 212(a)(9)(C)(ii) of the Act; *Matter of Torres-Garcia*, 23 I&N Dec. 866, 872-73 (BIA 2006). Thus, the Director did not err in denying the waiver application as a matter of discretion, as no purpose would be served in adjudicating the Applicant's waiver request for fraud or willful misrepresentation while he remains inadmissible under section 212(a)(9)(C)(i) of the Act.

III. CONCLUSION

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. The Applicant has not met this burden.

ORDER: The appeal is dismissed.