U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21383531

Date: SEPT. 16, 2022

Appeal of Oakland Park Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident (LPR) 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 misrepresentation of a material fact. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Oakland Park Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded the Applicant did not establish extreme hardship to their U.S. citizen spouse, her only qualifying relative. On appeal, the Applicant submits a brief and additional evidence, asserting their eligibility. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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

A 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. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility ground if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(i) of the Act. If the foreign national demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

II. ANALYSIS

The Applicant arrived in the United States in [redacted] 2000 and presented a foreign passport containing a nonimmigrant visitor's visa to enter the United States as a tourist. The Applicant was referred to secondary inspection upon arrival where it was discovered that the photograph on the visitor's visa had been substituted, and the Applicant was found to be inadmissible under section 212(a)(6)(C)(i)

for willfully misrepresenting a material fact while seeking to procure admission into the United States. At that time, the Applicant expressed a fear of returning to her home country and she was granted a credible fear interview to apply for asylum. *See generally* section 235(b)(1)(B) of the Act, 8 U.S.C. § 1225(b)(1)(B).

Subsequently in August of 2000, the Applicant withdrew her asylum claim so she could return to her home country and attend to an ill family member. She was removed from the United States in [redacted] 2000 under the expedited removal process. *See* section 235(b)(1) of the Act. Those removed under the expedited removal process are ineligible for admission to the United States for a period of at least five years. Section 212(a)(9)(A)(i) of the Act. After being removed from the United States, the Applicant travelled to Canada. While in Canada, in December of 2000 she rode as a passenger in a vehicle to the U.S.-Canadian border where she and the vehicle were waved through the port of entry, and she was not directly questioned by a U.S. immigration officer.

After the Applicant filed the waiver application and a Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application), the Director denied both applications for reasons stemming from her photo-subbed visitor's visa. The Director concluded the Applicant did not establish extreme hardship to her qualifying relative and denied the waiver application, and denied the adjustment application because of the related inadmissibility ground. Within the Director's decisions, they did not address any other grounds of inadmissibility.

Section 101(a)(13)(A) of the Act, 8 U.S.C. § 1101(a)(13)(A), provides this partial definition: "The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." In the context of one who "seeks admission," this phrase has been interpreted to include those Congress has defined under the concept of an "applicant for admission" as those who are attempting to present themselves to an immigration officer to enter the United States at the border or at a port of entry.[1] *Cf. Matter of Lemus-Losa*, 24 I&N Dec. 373, 376 (BIA 2007); *Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012) (describing the use of this same phrase in the context of a separate but closely related inadmissibility ground under section 212(a)(9)(B)(i) of the Act).

Those who seek, or gain, admission by being waved through a port of entry by an immigration officer comply with procedural regularities as it relates to the terms "admitted" and "admission" as defined in section 101(a)(13)(A). *Matter of Quilantan*, 25 I&N Dec. 285, 290 (BIA 2010) (citing *Matter of Areguillin,* 17 I&N Dec. 308, 310 (BIA 1980)). *Cf. Tula Rubio v. Lynch*, 787 F. 3d 288, 293 (5th Cir. 2015) (foreign national's entry pursuant to wave of immigration officer's hand while a sleeping passenger in a car satisfied cancellation of removal requirement of being admitted in any status). After a review of the statute and the above legal opinions, we conclude the Applicant presented herself as an applicant for admission and was admitted to the United States in December of 2000 at the U.S.-Canadian border.

[1] There are additional classes of those who are considered to be "seeking admission"; we are only discussing those who are seeking admission as is relevant to this waiver application by presenting themselves to an immigration officer at a port of entry.

Section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), provides any "[a]rriving alien who has been ordered removed . . . and who again seeks admission within 5 years of the date of such removal . . . is inadmissible." *See also Lemus-Losa*, 24 I&N Dec. at 377 (finding section 212(a)(9)(A) of the Act renders a foreign national who departed the United States while an order of removal was outstanding, and who seeks admission within certain periods following the date of their departure or removal to be inadmissible). A foreign national under the following fact pattern is inadmissible under section 212(a)(9)(A)(i) for seeking admission within five years of being removed from the United States:

- They have been ordered removed from the United States,
- Within five years of the date that removal was effected, they present themselves for admission to a U.S. immigration officer at the border or port of entry,
- They are not directly questioned by any immigration officer, and
- They are waved through the port of entry by an immigration officer.

Here, the Applicant fits this exact fact pattern. She was ordered removed from and departed the United States, and in less than five years she approached a U.S. port of entry as a passenger in a vehicle, she did not possess a valid document to enter the United States, she was not asked any questions by the immigration officer, and the vehicle she was occupying was waved through the port of entry. These facts lead us to the conclusion that she sought admission, and she did so within five years of the departure date relating to her removal order. This renders the Applicant inadmissible under section 212(a)(9)(A)(i).

There is generally no waiver available for a section 212(a)(9)(A)(i) violation. The statute contains one exception for those who, before they attempt to return to the United States, obtain consent from USCIS to reapply for admission.[2] *See* section 212(a)(9)(A)(iii) of the Act. The Board of Immigration Appeals has ruled on this issue. They found if a foreign national reenters, or attempts to reenter, the United States during the applicable time-barred period after removal (i.e., 5, 10, or 20 years), they are inadmissible unless they obtained an approved Form I-212 prior to traveling to the United States. *See Matter of Arambula-Bravo*, 28 I&N Dec. 388, 397 n.6 (BIA 2021) (citing *Matter of Torres-Garcia*, 23 I&N Dec. 866, 871–73 (BIA 2006).[3] It is seeking admission during the time-barred period that triggers this inadmissibility ground.[4]

Neither the record, nor USCIS systems, reflect the Applicant obtained consent from USCIS to reapply for admission by obtaining an approved Form I-212 prior to being waved through the port of entry in December of 2000. She is therefore inadmissible under a provision of the Act for which the current waiver application cannot remedy. Consequently, no purpose would be served in adjudicating the appeal of this waiver application for willful misrepresentation while she would continue to be

[2] Consent from USCIS to reapply for admission is achieved through an approved Form I-212, Application for Permission to Reapply for Admission.

[3] We note the regulation at 8 C.F.R. § 212.2(a), with its references to temporary 5-and 20-year periods of inadmissibility for previously removed individuals, bears an obvious relationship to former section 212(a)(6)(B) of the Act, but it does not correspond to any provision of current section 212(a)(9) of the Act. *Torres-Garcia*, 23 I&N Dec. at 874.

[4] Those who wait outside of the United States for the requisite time period for which they are barred from seeking admission (i.e., 5, 10, or 20 years), and make no attempt at admission, are no longer inadmissible. *Torres-Garcia*, 23 I&N Dec. at 872.

inadmissible under section 212(a)(9)(A)(i). 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.