U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19260266

Date: APR. 29, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Ethiopia, has applied for an immigrant visa and seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), for unlawful presence, and section 212(i), 8 U.S.C. § 1182(i), for fraud or misrepresentation.

The Director of the Nebraska Service Center denied the Form I-601, concluding that the record did not establish that the Applicant had established eligibility for the requested waiver. Specifically, the Director denied the waiver as a matter of discretion, concluding that the Applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act and was therefore not currently statutorily eligible for permission to reapply for admission to the United States.

The Applicant contests her inadmissibility under section 212(a)(9)(C)(i)(II) of the Act on appeal and contends that she has established her 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

A foreign national who has been unlawfully present in the United States for 1 year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i) of the Act. A foreign national is deemed to be unlawfully present in the United States if present after the expiration of the period of authorized stay or if present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act. There is a discretionary 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 foreign national. Section 212(a)(9)(B)(v) of the Act.

In addition, 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 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. In contrast to inadmissibility under section 212(a)(9)(B), inadmissibility under section 212(a)(9)(C) is a permanent ground of inadmissibility that does not expire. 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)(II) of the Act and therefore whether she is eligible for a waiver based on extreme hardship to a qualifying relative under sections 212(a)(9)(B)(v) and section 212(i) of the Act.

The record indicates that in [redacted] 1998 the Applicant attempted to enter the United States by using the Canadian citizenship card and driver's license of another individual. She was found inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation, received an order of removal under section 235(b)(1) of the Act, and was removed to Canada.[1]

In denying the application, the Director stated: "Our records show that you were removed from the United States under removal order in 1998 and illegally returned (or attempted to return) to the United States without being admitted on or about February 1, 1999. Therefore, you are inadmissible under INA section 212(a)(9)(C)(i)(II)."

On appeal, the Applicant contests the Director's determination that she returned to the United States in February 1999 "without being admitted." She asserts that she "presented herself for inspection and admission and was waived [*sic*] into the United States by a border patrol officer on February 1, 1999." In Part 10 of her Form I-601, the Applicant asserted that "[i]n 1999, I rode with two men to the United States. To the best of my recollection, we arrived at the border in [redacted] NY and the officer waved us through without checking our identification." Additionally, in a February 2019 notarized declaration offered with her Form I-601, the Applicant stated: "In 1999, I rode with two [redacted] residence guys that happened to go to the U.S. As I recall correctly, we have arrived at the border in [redacted] NY and the officer told us to go through the gate without checking our ID."

With the appeal, the Applicant provides a signed statement (dated January 26, 2021) offering further explanation about how she "reentered the United States of America in 1999." The Applicant asserts:

[1] Upon the Applicant's removal from the United States, she signed Form I-296, Notice to Alien Ordered Removed/Departure Verification, which informed her that she was barred from reentering the United States for five years, and which advised her of the consequences should she reenter or attempt to reenter the United States during the prohibited period.

> When we approached the [redacted] border crossing, [redacted] (the driver) asked me to give him my passport. So, I did. And at the checkpoint, [redacted] open the window of the car on his side and greeted the officer. The officer also asked to put down the back window on my side. The officer asked again what the purpose of our trip was. [redacted] answered "shopping." Even though [redacted] was holding and ready to show our passports to the officer, he said "have a good day." Then we drove away.

The record, however, includes evidence that contradicts the Applicant's claim that she presented herself for inspection and admission and was waved into the United States by a border patrol officer on February 1, 1999. On her Form I-485, Application to Register Permanent Residence or Adjust States, filed on April 30, 2001, the Applicant indicated in Part 1 that her "Date of Last Arrival" was "02/01/99" and she wrote in Part 3 that "I entered undetected (unauthorized) through Canadian Border." In addition, the Applicant filed Supplement A to her Form I-485 with the accompanying fee of $1000.00. Under Part 2 (item 4) of Supplement A, the Applicant checked the box indicating that that she "last entered the United States . . . Without inspection." She also wrote in Part 2 (item 6) that she was "applying for adjustment of status" as "Not inspected." The Applicant signed both her Form I-485 and Supplement A, certifying under penalty of perjury that the application and the submitted evidence are all true and correct.[2] *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). Furthermore, the Applicant appeared for her adjustment of status interview on June 11, 2003, was interviewed under oath, affirmed the information she provided on the Form I-485, and re-signed the application at the bottom of page 4.

The Applicant's recollections from 2019 and 2021 relating to her February 1999 U.S. entry are inconsistent with the information she provided under penalty of perjury in both Form I-485 and Supplement A in April 2001, and at her adjustment of status interview in June 2003. The appellate submission does not resolve these discrepancies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Because the Applicant certified under penalty of perjury in Form I-485 and Supplement A that she last entered the United States in February 1999 "undetected," "unauthorized," "without inspection," and "not inspected," we agree with the Director that she is inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

As the Applicant's last departure from the United States was in August 2018 and she has not remained outside of the country for at least 10 years, as required, she 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 unlawful presence and for fraud or willful misrepresentation while she remains inadmissible under section 212(a)(9)(C)(i) of the Act.

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.

[2] Both Part 4 of Form I-485 and Part 3 of Supplement A require an applicant to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that this application, and the evidence submitted with, is all true and correct."

ORDER: The appeal is dismissed.