U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19230430

Date: JUN. 01, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Honduras currently residing in Honduras, has applied for an immigrant visa. A foreign national seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for unlawful presence and seeks a waiver of that inadmissibility. Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Nebraska Service Center denied the application, concluding that the Applicant was also inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for entering the United States without being admitted after a previous removal.[1] Since there is no exception or waiver for this ground of inadmissibility until 10 years after the Applicant's departure from the United States, and those 10 years had not passed of the time of filing, the Director found that the Applicant would remain inadmissible even if the Form I-601, Application for Waiver of Grounds of Inadmissibility, were approved. The Director denied the Form I-601 application as a matter of discretion, as approving it would serve no purpose. The matter is now before us on appeal.

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

I. LAW

A noncitizen who has been unlawfully present in the United States for one 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)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). USCIS may grant a discretionary waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act

[1] Under section 212(a)(9)(C)(i)(II) of the Act, any noncitizen who has been ordered removed from the United States and who subsequently enters or attempts to enter the United States without being admitted is inadmissible. Under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), USCIS may grant a discretionary exception to this ground of inadmissibility if the noncitizen is seeking permission to apply for admission at least 10 years after the date of their last departure from the United States.

if refusal of admission to the noncitizen would result in extreme hardship to their U.S. citizen or lawful permanent resident spouse or parent.

II. ANALYSIS

The record indicates that the Applicant attempted to enter the United States without inspection on [redacted] 2004. He was ordered removed pursuant to Section 240 of the Act, 8 U.S.C. § 1229a, on [redacted] 2004, and he was removed on [redacted] 2004. Later in 2004, the Applicant entered the United States without inspection. He departed the United States on September 2, 2014.

In 2020, the Applicant applied for an immigrant visa as the spouse of a U.S. citizen. The U.S. Department of State found the Applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a year or more and then seeking admission to the United States within 10 years of his departure. The State Department also found the Applicant inadmissible under section 212(a)(9)(C)(i)(II) of the Act for entering the United States without being admitted after a previous removal.

The Applicant filed a Form I-601 waiver application for his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. He concurrently filed a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, to seek an exception for his inadmissibility under section 212(a)(9)(C)(ii) of the Act. The Director of the Nebraska Service Center denied the Form I-212, finding that the Applicant was statutorily ineligible to seek permission to reapply for admission because less than 10 years had passed since his last departure from the United States.

Because no waiver exists for inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, the Director found that the Applicant would remain inadmissible even if his I-601 petition were approved. Therefore, adjudicating the Form I-601 would not serve a purpose, and the Director denied the application as a matter of discretion.

The Applicant last departed from the United States on September 2, 2014. He may not seek permission to reapply for admission until he has remained outside of the United States for at least 10 years from the date of that last departure. *See* section 212(a)(9)(C)(ii) of the Act. Because 10 years have not passed since the last time the Applicant departed the United States, even if his Form I-601 is approved, he will still be inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act. Therefore, adjudicating the waiver petition would serve no purpose, and it will remain denied as a matter of discretion.

ORDER: The appeal is dismissed.