U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13435571

Date: MAR. 23, 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 sections 212(a)(9)(B)(v) and 212(h) and of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(h).

The Director of the Nebraska Service Center detailed the Applicant's inadmissibility for unlawful presence in the United States of more than one year prior to departure, and for having been convicted of a crime involving moral turpitude. The Director also noted that the U.S. Department of State had found the Applicant inadmissible pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for entering the United States without being admitted after having accrued more than one year of unlawful presence in the United States prior to departure. The Director concluded that because the Applicant is inadmissible under section 212(a)(9)(C) of the Act, he is ineligible to reapply for admission into the United States until he has remained outside the United States for at least 10 years since his last departure. The waiver application was thus denied as a matter of discretion.

On appeal, the Applicant asserts that he is not inadmissible under section 212(a)(9)(C) of the Act and therefore merits approval of the waiver application.

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. This inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent. Section 212(a)(9)(B)(v) of the Act.

Any foreign national convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A) of the Act. Individuals found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. A

waiver is available if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. A waiver is also available where the activities occurred more than 15 years before the date of the application if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the foreign national has been rehabilitated (section 212(h)(1)(A).

Section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), provides, in pertinent part, that any foreign national who has been unlawfully present in the United States for an aggregate period of more than 1 year, and who enters or attempts to reenter the United States without being admitted, is inadmissible.

Foreign nationals found inadmissible under section 212(a)(9)(C) of the Act may seek permission to reapply for admission under section 212(a)(9)(C)(ii), which provides that inadmissibility shall not apply to a foreign national seeking admission more than ten years after the date of last departure from the United States if, prior to the reembarkation 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 foreign national's reapplying for admission.

II. ANALYSIS

The issue presented on appeal is whether the Applicant should be granted a waiver of inadmissibility in the exercise of discretion. The Applicant does not contest that he is inadmissible pursuant to sections 212(a)(9)(B)(i), for unlawful presence, and 212(a)(2)(A) of the Act, for having been convicted of a crime involving moral turpitude. Rather the Applicant contends on appeal that he is not inadmissible pursuant to section 212(a)(9)(C) of the Act, because he maintains that he first entered the United States without inspection in approximately 1990 and did not depart the United States until his voluntary departure in February 2014.

Because the Applicant is residing abroad and applying for a visa, the U.S. Department of State makes the final determination concerning his eligibility for a visa. As detailed above, a consular officer of the U.S. Department of State determined that the Applicant was inadmissible pursuant to sections 212(a)(9)(B)(i) of the Act, for having accrued more than one year of unlawful presence in the United States prior to departure, and 212(a)(2)(A) of the Act, for having been convicted of a crime involving moral turpitude. The U.S. Department of State also determined that the Applicant was inadmissible pursuant to section 212(a)(9)(C) of the Act, for entering the United States without being admitted after having accrued more than one year of unlawful presence in the United States prior to departure.

A foreign national who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the foreign national has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006); *Matter of Briones,* 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez,* 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the Applicant's last departure was at least ten years ago, the Applicant has remained outside the United States, and USCIS has consented to the Applicant's reapplying for admission. In the present matter, the Applicant has not established that he has remained outside the United States for 10 years since his last departure. He is currently statutorily ineligible to apply for permission to reapply for admission. The waiver application must therefore be denied as a matter of discretion.

The burden of proof in these proceedings rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met this burden, and the application will remain denied.

ORDER: The appeal is dismissed.