U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7555488

Date: JULY 8, 2020

Appeal of Nebraska Service Center Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant, who requested an immigrant visa abroad, was found inadmissible under section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(I), for entering the United States without being admitted after having accrued more than one year of unlawful presence. She seeks permission to reapply for admission to the United States pursuant to section 212(a)(9)(C)(ii) of the Act.

The Director of the Nebraska Service Center denied the application, concluding that the Applicant did not currently meet the requirements for consent to reapply for admission under that section because she last departed from the United States in April 2018 and 10 years have not elapsed since that date.

On appeal, the Applicant asserts that she is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act and permission to reapply for admission therefore should not be required.

In these proceedings, an applicant has the burden of proving eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Applicant has not met this burden.

I. LAW

Section 212(a)(9)(C)(i)(I) of the Act provides that an alien 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. There is an exception to this bar available to aliens who have remained outside the United States for at least 10 years since their last departure from the United States and who then apply for and receive permission to reapply for admission. Section 212(a)(9)(C)(ii) of the Act.

II. ANALYSIS

The issues on appeal are whether the Applicant is inadmissible to the United States under section 212(a)(9)(C)(i)(I) of the Act and, if so, whether she is currently eligible to seek an exception to this inadmissibility under section 212(a)(9)(C)(ii) of the Act.

The record reflects that the Applicant was admitted to the United States as a nonimmigrant in 1997 with authorization to remain in the United States until March 1998; however, she did not leave until 11 years later, in March 2009. The Applicant returned to the United States without inspection in September 2009, and continued to reside in the country until April 2018 when she traveled to her native Poland to apply for an immigrant visa. Following a visa interview, a U.S. Department of State Consular Officer determined that the Applicant was inadmissible under section 212(a)(9)(C)(i)(I) of the Act because she entered the United States without inspection in September 2009, after previous unlawful presence of over one year. The Applicant filed the instant Form I-212 requesting permission to reapply for admission to the United States but, as stated, the Director denied the request concluding that the Applicant that was ineligible for the exception in section 212(a)(9)(C)(ii) of the Act because 10 years have not elapsed from her last departure. In support of this conclusion, the Director referenced two precedent decisions of the Board of Immigration Appeals (the Board): *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006), and *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007).

The Applicant argues that the Director erred in relying on the two Board's decisions, because they are distinguishable from her case; specifically, unlike the aliens in *Torres-Garcia* and *Briones* she was never in removal proceedings. However, there is nothing in either decision to suggest that inadmissibility under section 212(a)(9)(C)(i)(I) of the Act applies only to aliens in removal proceedings; rather, the Board specifically held in *Matter of Briones* that to be inadmissible under that section an alien must depart the United States after accruing an aggregate period of unlawful presence of more than one year and thereafter reenter, or attempt to reenter, the United States without being admitted. *Id.* at 365-66.

There is no dispute that the Applicant was unlawfully present in the United States from 1998 until 2009, and that she then left and reentered the United States without being admitted. Furthermore, because the Applicant is residing abroad and applying for an immigrant visa, the U.S. Department of State makes the final determination concerning her eligibility for a visa. Thus, as a result of the Consular Officer's finding that she is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, the Applicant requires permission to reapply for admission to the United States.

As stated, an alien who is inadmissible under section 212(a)(9)(C) may not apply for consent to reapply for admission unless the alien has been outside the United States for at least 10 years since the date of his or her last departure from the United States. *Matter of Torres-Garcia*, 23 I&N Dec. at 876; *Matter of Briones*, 24 I&N Dec. at 358-59; and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).

The record reflects that the Applicant last departed the United States in April 2018, less than 10 years ago. Consequently, we agree with the Director that the Applicant is statutorily ineligible to seek permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act at this time. Her Form I-212 therefore must remain denied.

ORDER: The appeal is dismissed.