U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7555486

Date: JULY 8, 2020

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, who requested an immigrant visa abroad, seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), for having accrued unlawful presence in the United States.

The Director of the Nebraska Service Center determined that the Applicant was inadmissible not only under section 212(a)(9)(B)(i)(II) of the Act for accruing one year or more of unlawful presence in the United States before her last departure in 2018, but also under section 212(a)(9)(C)(i)(I) of the Act, because she entered the United States without being admitted in 2009 after prior unlawful presence in the country for more than one year. The Director then denied the application as a matter of discretion, concluding that even if the waiver of unlawful presence under section 212(a)(9)(B)(v) of the Act were granted, the Applicant would still remain inadmissible under section 212(a)(9)(C)(i)(I) of the Act, as she has not remained outside the United States for 10 years and was currently ineligible to seek an exception to this inadmissibility ground.

On appeal, the Applicant asserts that the Director's decision was in error, because she is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act and U.S. Citizenship and Immigration Services (USCIS) had previously approved her Form I-601A, Application for Provisional Unlawful Presence Waiver, which waived the inadmissibility bar in section 212(a)(9)(B)(i)(II) of the Act.

In these proceedings, the Applicant has the burden of proving eligibility for a waiver of inadmissibility. 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

An alien 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)(II) of the Act. This ground of 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.

Section 212(a)(9)(C)(i)(I) of the Act, in turn, provides that an alien is inadmissible if he or she has been unlawfully present in the United States for an aggregate period of more than one year and thereafter enters, or attempts to reenter, the United States without being admitted. There is an exception to this inadmissibility in section 212(a)(9)(C)(ii) of the Act, but it is available only 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.

II. ANALYSIS

The Applicant asserts that she is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act and does not require permission to reapply for admission in order to enter the United States as an immigrant. She does not contest that she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence, but claims that this inadmissibility was previously waived when USCIS approved her Form I-601A.

The record reflects that the Applicant was admitted to the United States as a nonimmigrant in 1997 with authorization to remain in the country until March 1998, but she did not leave until March 2009. The Applicant then 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 subsequently filed a Form I-212 requesting permission to reapply for admission to the United States, but the Director denied the request concluding that the Applicant was ineligible for the exception in section 212(a)(9)(C)(ii) of the Act, because her last departure from the United States occurred in 2018, less than 10 years ago. In a separate decision, which we incorporate here by reference, we dismissed the Applicant's appeal of that decision, concurring that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act and does not currently meet the statutory criteria to seek permission to reapply for admission. Consequently, the Applicant is precluded from admission to the United States irrespective of any other inadmissibility grounds that may apply in her case.

We acknowledge that the Applicant was previously granted a provisional waiver of unlawful presence; however, the provisional waiver process applies to individuals who are inadmissible solely under section 212(a)(9)(B) of the Act.[1] Here, the Applicant is also inadmissible under section 212(a)(9)(C) of the Act, a separate ground of inadmissibility for which she currently may not seek an exception.

In view of the above, we agree with the Director that there is no constructive purpose in considering the merits of the Applicant's waiver request under section 212(a)(9)(B)(v) of the Act, because she will

[1] *See* 8 C.F.R. § 212.7(e). In addition, because the U.S. Department of State found the Applicant to be inadmissible under section 212(a)(9)(C)(i)(I) of the Act, the approval of her Form I-601A was automatically revoked. *See* 8 C.F.R. § 212.7(e)(14)(providing, in relevant part that the approval of a provisional unlawful presence waiver is revoked automatically if the Department of State denies the immigrant visa application based on a finding that the alien is ineligible to receive an immigrant visa for any reason other than inadmissibility under section 212(a)(9)(B)(i)(I) or (II) of the Act).

remain inadmissible and ineligible for admission to the United States even if the waiver were to be granted. Consequently, the waiver application was properly denied as a matter of discretion.

ORDER: The appeal is dismissed.