U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11133282

Date: SEPT. 28, 2020

Appeal of Washington Field Office Decision

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

The Applicant seeks permission to reapply for admission to the United States under section 212(a)(9)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i).

The Director of the Washington Field Office denied the Form I-212 application, concluding that because the Applicant had not remained outside of the United States for 10 years from the date of his last departure, he was ineligible for permission to reapply for admission.

On appeal, the Applicant claims that he is eligible to apply for permission to reapply for admission, and that his application should be granted in the exercise of discretion.

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. 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.

Section 212(a)(9)(C)(i) of the Act provides that an alien who "has been unlawfully present in the United States for an aggregate period of more than one year. . . and who enters or attempts to reenter the United States without being admitted is inadmissible." The accrual of unlawful presence for purpose of inadmissibility determinations under section 212(a)(9)(B)(i) or 212(a)(9)(C)(i) of the Act begins no earlier than the effective date of the amendment enacting this section, which is April 1, 1997.

Pursuant to section 212(a)(9)(C)(ii) of the Act, there is an exception for any "alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's 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 alien's reapplying for admission."

II. ANALYSIS

On appeal, the Applicant claims that he is eligible to seek permission to reapply for admission under section 212(a)(9)(C)(i) of the Act. The record reflects that the Applicant entered the United States without inspection in May 1997, departed in November 1997, entered without inspection in March 1999, departed in December 1999, entered without inspection in January 2000, and departed in December 2000. In [redacted] 2001, the Applicant attempted to enter the United States, was apprehended by immigration officials, and voluntarily returned to Mexico. He was admitted to the United States in March 2006 with a nonimmigrant H-2B visa, departed in November 2006, returned in August 2012 with a nonimmigrant H-2B visa and has remained in the United States. Therefore, he is inadmissible under section 212(a)(9)(C)(i)(I) of the Act for accruing an aggregate of period of one year or more of unlawful presence in 1997, 1999, and 2000, and then attempting to reenter the United States without being inspected and admitted or paroled in [redacted] 2001.

While the Applicant concedes that he is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, he asserts that he may apply for permission to reapply for admission without being outside of the country for 10 years. The Applicant contends that he has been physically present outside of the United States for an aggregate period of over 10 years, from [redacted] 2001 to March 2006 and from November 2006 until his most recent entry with a nonimmigrant H-2B visa in August 2012; USCIS policy memoranda and the Board of Immigration Appeals decisions regarding inadmissibility determinations under section 212(a)(9)(C) of the Act and Form I-212 adjudications do not address applicants with his unique circumstances and do not mandate that his Form I-212 should be denied; and he has demonstrated that he is otherwise admissible and eligible for adjustment of status.

Upon review, the record supports the Director's finding that because the Applicant had not remained outside of the United States for 10 years from the date of his last departure, he was ineligible for permission to reapply for admission. An individual who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the individual has been outside the United States for more than ten years since the date of the individual's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). *See 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 remained in the United States since entering with an H-2B visa in August 2012. He is in the United States and has not been outside the United States for ten years since the date of his last departure, and he is not currently eligible to seek an exception to this inadmissibility. The application for permission to reapply for admission must therefore remain denied.

ORDER: The appeal is dismissed.