U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28727082

Date: NOVEMBER 16, 2023

Appeal of Nebraska Service Center 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)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii).

The Director of the Nebraska Service Center denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the Form I-212 could not be adjudicated because the Applicant had not yet been found inadmissible by a consular officer.

On appeal, the Applicant contends that several provisions of the Act allow U.S. Citizenship and Immigration Services (USCIS) to adjudicate a Form I-212 without consular processing.

While the Applicant is correct in noting that under certain circumstances, a Form I-212 may be filed prior to the filing or approval of a visa application, consent to reapply for admission does not, alone, provide the applicant with immigrant or nonimmigrant status; they must still be eligible and approved for an immigrant visa or adjustment of status. In the present case, the Applicant was removed from the United States in 2002, 2004, and 2005 – he has resided in Brazil since his removal in 2005. The Applicant is therefore inadmissible for 20 years from the date of his third removal in 2005.[1] In February 2023, an immigrant visa petition was filed on his behalf, and as of this date, it has not been approved. Because the Applicant is residing abroad and applying for a visa, he is not eligible to have his Form I-212 adjudicated before consular processing as the U.S. Department of State is responsible for making the final determination concerning his eligibility for a visa, including whether he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act,[2] or under any other ground. As there has

[1] Section 212(a)(9)(A)(ii) of the Act provides, in part, that a foreign national, other than an "arriving alien," who has been ordered removed under section 240 of the Act, 8 U.S.C. § 1229a, or any other provision of the law, or who departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of a noncitizen convicted of an aggravated felony) is inadmissible.

[2] The Applicant states that he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act but he is eligible to reapply for admission to the United States because he has remained outside the United States for 10 years after his last removal. Section 212(a)(9)(C)(i)(II) of the Act provides that any noncitizen who has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible. Noncitizens 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

been no initial finding of inadmissibility by a consular officer, the appeal of the denial of the Form I-212 will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.

inadmissibility shall not apply to a noncitizen seeking admission more than 10 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 noncitizen's reapplying for admission.