



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 24227504

Date: OCT. 20, 2023

Appeal of San Bernardino, California Field Office Decision

Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal

The Applicant seeks permission to reapply for admission to the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), for entering the United States without being admitted after having been ordered removed.

The Director of the San Bernardino, California Field Office, denied the Form I-212, Application for Permission to Reapply for Admission, concluding that the Applicant did not meet the requirements for consent to reapply for admission. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides that any noncitizen, other than an “arriving alien” described in section 212(a)(9)(A)(i), who has been ordered removed or 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. Noncitizens found inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) if “prior to the date of the reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary of Homeland Security has consented to the noncitizen’s reapplying for admission.”

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

The Applicant currently resides in the United States and is seeking conditional approval of the application under the regulation at 8 C.F.R. § 212.2(j) before he departs, as he will be inadmissible upon his departure due to his prior removal order. The approval of the application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if he fails to depart.

II. ANALYSIS

The issue presented on appeal is whether the Applicant should be granted permission to reapply in the exercise of discretion. In this case, the Applicant is currently ineligible for permission to reapply for admission to the United States because he has not remained outside the United States for at least 10 years since his last departure.

The record reflects that the Applicant attempted to enter the United States with a fraudulently obtained U.S. lawful permanent resident card on [REDACTED] 2008, and was removed to Mexico. He reentered the United States on October 8, 2008, and was apprehended. The Applicant was issued a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, on [REDACTED] 2008, and removed to Mexico. He reentered the United States on [REDACTED] 2008, and was issued a Form I-871 and removed to Mexico the same day. The Applicant indicated he reentered the United States without inspection or admission on October 23, 2008, and has not departed.

The Director noted the Applicant's immigration history, including multiple attempts to enter the United States and his two reinstated removal orders, and found him inadmissible under section 212(a)(9)(C)(i)(II) of the Act, concluding that he is ineligible to apply for the exception to this inadmissibility as he has not departed and remained outside of the United States for 10 years. On appeal, the Applicant asserts that the Director denied his Form I-212 because he was not an applicant for a visa, admission to the United States, or adjustment of status. While the Director issued a request for evidence relating to this information, the denial was instead based on the Applicant's inadmissibility under section 212(a)(9)(C)(i)(II) of the Act. The Applicant also argues that because he intends to apply for an immigrant visa abroad, the U.S. Department of State will make the final determination regarding his inadmissibility, and therefore his conditional Form I-212 should be granted as a matter of discretion.

A noncitizen who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the noncitizen has been outside the United States for more than 10 years since the date of the noncitizen's last departure from the United States. *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). 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 10 years ago, the Applicant has remained outside the United States, and U.S. Citizenship and Immigration Services has consented to the Applicant's reapplying for admission. However, the Applicant has not remained outside the United States for 10 years after his last departure in October 2008. He is thus currently ineligible to apply for the exception to his inadmissibility under section 212(a)(9)(C) of the Act. The application for permission to reapply for admission remains denied.

ORDER: The appeal is dismissed.