



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

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

In Re: 27157830

Date: OCT. 24, 2023

Appeal of New York City, New York Field Office Decision

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

The Applicant indicated that he seeks advance 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 unlawfully present in the United States for an aggregate period of more than 1 year.<sup>1</sup>

The Director of the New York City, New York Field Office, denied the Form I-212, Application for Permission to Reapply for Admission, as a matter of discretion, concluding that the favorable factors did not outweigh the unfavorable factors in the case. 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)(C) of the Act provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than 1 year, or 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 inadmissibility shall not apply to a noncitizen seeking admission more than ten 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.

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<sup>1</sup> We note that though the Applicant indicated on his Form I-212 that he seeks advance permission to reapply for admission to the United States because he entered the United States without being admitted after having been unlawfully present for an aggregate period of more than 1 year, the record does not reflect he would be subject to this inadmissibility ground.

Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *Matter of Tin*, 14 I&N Dec. 371, 373-74 (Reg'l Comm'r 1973).

## II. ANALYSIS

The record reflects that the Applicant attempted to enter the United States with a fraudulently obtained Venezuelan passport and nonimmigrant visa on [REDACTED] 2000, and was removed to Colombia the next day. The Applicant did not indicate on the Form I-212 that he was previously removed from the United States. Instead, the Form I-212 noted that the Applicant entered the United States without inspection or admission on June 24, 2000, and had not departed. According to U.S. government records, the Applicant departed the United States since submitting the Form I-212 on August 9, 2023.

In denying the application, the Director listed the factors U.S. Citizenship and Immigration Services (USCIS) considers when determining whether approval of the Form I-212 is warranted as a matter of discretion and stated the Applicant did not submit evidence of favorable factors. The Director concluded that the unfavorable factors, to include his previous removal from the United States and subsequent reentry without inspection or admission, outweighed the favorable factors. On appeal, the Applicant asserts that the denial lacked a legal or factual basis and submits new evidence regarding hardship his U.S. citizen spouse and children would experience if his application were denied.

Upon review of the record in its totality, the Applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act for having been removed from the United States on [REDACTED] 2000, and reentering the country on June 24, 2000, without admission. As the Applicant did not then depart the United States until August 2023, he is therefore, 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. We acknowledge that the Applicant indicated on his Form I-212 that he intends to apply for an immigrant visa abroad and the U.S. Department of State will make the final determination regarding findings of inadmissibility. However, 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 USCIS has consented to the Applicant's reapplying for admission. The Applicant has not remained outside the United States for 10 years after his last departure in August 2023. 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.