U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28599527

Date: DEC. 4, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a citizen of Colombia, applied to adjust status to that of a lawful permanent resident (LPR) and concurrently filed a Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application) seeking a waiver of inadmissibility for fraud and misrepresentation under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility.[1]

The Director of the Queens, New York Field Office administratively closed the waiver application, determining that U.S. Citizenship and Immigration Services (USCIS) did not have jurisdiction to adjudicate the application. We dismissed the Applicant's subsequent appeal for the same reason. The Applicant moves to reopen and reconsider that decision.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our previous decision was based on an incorrect application of law or USCIS policy and that the decision was based on the evidence in the record of proceedings at the time of the decision. 8. C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the immigration benefit sought. 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). Upon review, we will dismiss the motion.

[1] The Applicant also filed a Form I-212, Application for Permission to Reapply for Admission (Form I-212), which the Director denied as a matter of law and as a matter of discretion. In that decision, the Director identified the Applicant as inadmissible under the following grounds: sections 212(a)(9)(A)(ii) (having been ordered removed as a deportable noncitizen), 212(a)(9)(C)(i)(II) (entering the United States without being admitted or paroled after having been excluded, deported, or removed); 212(a)(6)(B) (failing to attend removal proceedings); 212(a)(6)(C)(i) (procuring an immigration benefit through willful fraud or misrepresentation), 212(a)(2)(A) (having been convicted of crimes involving moral turpitude), 212(a)(2)(B) (having multiple criminal convictions). We dismissed the appeal, determining no purpose would be served in adjudicating the I-212 because there was no pending adjustment application and even if the I-212 were approved it would not cure all the inadmissibilities raised by the Director.

A noncitizen who has been unlawfully present in the United States for one 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, 8 U.S.C. § 1182(a)(9)(B)(i)(II). USCIS may grant a discretionary waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act if refusal of admission to the noncitizen would result in extreme hardship to their U.S. citizen or LPR spouse or parent.

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 one 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 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.

The record reflects that the Applicant first entered the United States without inspection in 1988. In 1996, he was convicted of larceny in the second degree in violation of section 53a-123 of the Connecticut General Statutes Annotated and criminal conspiracy and retail theft in violation of section 3929(a)(1) of the Pennsylvania Consolidated Statutes. In 1997, he was convicted of possession of burglary tools in violation of section 466 of the California Penal Code. Following this conviction, the Applicant was remanded to the custody of immigration officials and ordered removed. The Applicant departed the United States in 1997. Having already been removed from the United States in 1997, he was placed into removal proceedings under an alias he used to apply for asylum and was ordered removed *in absentia* after the asylum application was denied. On [redacted] 2012, the Applicant was apprehended by immigration officials upon reentering the United States with fraudulent documents. On [redacted] 2012, the Applicant's [redacted] 1997 removal order was reinstated. He received deferred action to assist in an investigation and remained in the United States until October 2015 when he briefly departed and reentered pursuant to a grant of humanitarian parole.

In our previous decision, we determined that because the Applicant was not an arriving alien when he reentered the United States in 2015 and because proceedings had not been terminated with the Executive Office for Immigration Review (EOIR), the waiver application was properly administratively closed. On motion, the Applicant asserts that his 2015 departure executed the 2012 removal order and the parole in 2015 makes him an arriving alien over which USCIS does have jurisdiction.

Although we acknowledge the Applicant's arguments, we will not address and hereby reserve them as they are not dispositive of the instant motion[2] because, as the Director noted in the decision denying the Form I-212, the Applicant is inadmissible under section 212(a)(9)(C)(ii) of the Act. In this regard, although the Applicant remained outside of the United States for more than 10 years from 1997 to 2012, he did not obtain consent to apply for admission prior to his reembarkation in 2012 as required under 212(a)(9)(C)(ii) of the Act. Because no waiver exists for inadmissibility under section

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that agencies are not required to make determinations on issues that are unnecessary to the ultimate decision).

212(a)(9)(C)(ii) of the Act, the Applicant would remain inadmissible even if the waiver application were approved. Therefore, adjudicating the waiver application would not serve a purpose.

The Applicant last departed from the United States in October 2015. He may not seek permission to reapply for admission until he has remained outside of the United States for at least 10 years from the date of that last departure and seeks consent to reapply for admission. *See* section 212(a)(9)(C)(ii) of the Act. Therefore, adjudicating the waiver application would serve no purpose, and it will remain denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.