U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24806425

Date: MAR. 1, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant is a native and citizen of Nicaragua who seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). The Director of the Salt Lake City, Utah Field Office determined that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation. The Director denied the Form I-601, Application to Waive Inadmissibility Grounds, as a matter of discretion, because the Applicant is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act and would remain inadmissible even if the waiver application were approved.

We dismissed the Applicant's appeal and his two subsequent combined motions to reopen and reconsider. The matter is now before us on a third combined motion to reopen and reconsider. 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 motions.

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that our decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We must dismiss a motion that does not satisfy the applicable requirements. 8 C.F.R. § 103.5(a)(4).

As we stated in our prior decisions, incorporated here by reference, the Applicant attempted to enter the United States in July 1998 with a fraudulent permanent resident card but was detained and expeditiously removed, and then entered the country without inspection in August 1998. He later applied for Temporary Protected Status (TPS), and in 2017 he departed from and returned to the United States with an approved TPS travel document. In denying the waiver application, the Director concluded that even if the Applicant established extreme hardship to a qualifying relative as required for a waiver of inadmissibility under section 212(i) of the Act, he would remain inadmissible under section 212(a)(9)(C)(i)(II) of the Act based on his entry without inspection in August 1998 after his removal in [redacted]1998. The Director determined that due to this inadmissibility, the Applicant needed to obtain permission to reapply for admission into the United States but was statutorily ineligible to

do so because he had not remained outside of the United States for 10 years following his last departure.

In his appeal and prior motions, the Applicant argued that he is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act because he reentered the United States pursuant to a TPS travel document in 2017. However, we explained that the inadmissibility finding under section 212(a)(9)(C)(i)(II) of the Act was based on his August 1998 reentry into the United States without inspection or admission, not the 2017 entry with a TPS travel document. Under section 212(a)(9)(C)(i)(II) of the Act, any foreign national who has "been ordered removed . . . and who enters or attempts to reenter the United States without being admitted is inadmissible." Foreign nationals who are inadmissible under this section of the Act must file a Form I-212, Application for Permission to Reapply for Admission, to seek permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act, but they may not do so until more than 10 years have passed since their last departure from the United States.

The Applicant also previously referred to a USCIS Policy Memorandum,[1] which was later rescinded,[2] specifying that under our Adopted Decision of *Matter of Z-R-Z-C-*, Adopted Decision 2020-02 (AAO Aug. 20, 2020), a TPS recipient granted authorization to temporarily travel abroad who reenters the United States using a Department of Homeland Security travel document resumes the immigration status they held at the time of departure. But we noted that neither the Policy Memorandum nor *Matter of Z-R-Z-C-* discussed inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, and that the Applicant's TPS travel document says a person found inadmissible must apply for a waiver of inadmissibility. We considered the Applicant's argument that we should consider his 2017 entry via a TPS travel document, rather than his 1998 entry without inspection, to determine whether he can adjust status to that of a lawful permanent resident (LPR). We addressed his reference to *Sanchez v. Mayorkas*, 141 S.Ct. 1809 (2021), which states that the Act does not permit individuals who have received TPS to adjust status if they were not lawfully inspected and admitted when they first arrived in the United States, noting that the Court's holding did not address subsequent travel with a TPS travel document and that the Court was expressing no view on whether a TPS recipient who entered the United States based upon a TPS travel document is eligible to adjust absent any other bar. Finally, we addressed his contention that he was coerced into using a fraudulent document therefore is not inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act. However, we explained that even if he were not inadmissible under section 212(a)(6)(C)(i) of the Act, he remained inadmissible under section 212(a)(9)(C)(i)(II) of the Act and has not remained outside of the United States for at least 10 years after his last departure.

On his third combined motion to reopen and reconsider, the Applicant summarizes his previous argument disputing that he is inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act. However, based on our prior determination that regardless of his inadmissibility under this section he remains inadmissible under section 212(a)(9)(C)(i)(II) of the Act, he states he "will also not further discuss this ground of inadmissibility . . . ." He does not submit new evidence about this ground or allege that our prior determination on this point was in error, and we

[1] USCIS Policy Memorandum PM-602-0179, *Matter of Z-R-Z-C-*, Adopted Decision 2020-02 (AAO Aug. 20, 2020), https://www.uscis.gov/legal-resources/policy-memoranda.

[2] USCIS Policy Memorandum PM-602-0188, Rescission of Matter of Z-R-Z-C- as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries (July 1, 2022), https://www.uscis.gov.

therefore deem this issue waived. *See U.S. v. Wiseman*, 297 F.3d 975, 979 (10th Cir. 2002) (explaining that "[o]rdinarily, issues not raised by a party on appeal are deemed waived").

Regarding his inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, the Applicant repeats his assertions that his 2017 entry pursuant to a TPS travel document should make him eligible for adjustment of status. He contends that pursuant to *Matter of Z-R-Z-C-*, TPS recipients may adjust status after being inspected and admitted or paroled, even if they initially entered without inspection prior to obtaining TPS, and that we have failed to consider that this has a "retroactive application" over a previous unlawful entry.[3] The Applicant also expresses a belief that we mistakenly "applied the interpretation of '*reentry*' retroactively, back in 1998 and do[] not recognize the '*legal reentry*' under" *Matter of Z-R-Z-C-*. He also asserts that his departure and reentry in 2017 "resulted in an execution of the prior removal order," such that he no longer has an outstanding removal order and is eligible to adjust status as a beneficiary of TPS.[4]

However, the issue here is not whether the Applicant lawfully reentered in 2017 or whether there is an outstanding removal order against him, but that he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act because he was removed in 1998 and then reentered without inspection that same year. The Applicant's admission with a TPS travel document in 2017 did not cure the permanent inadmissibility that resulted from his 1998 entry without inspection. As we have explained, the Applicant must file a Form I-212 for consent to reapply for admission, but cannot do so until he has remained outside the United States for 10 years. Section 212(a)(9)(C)(ii) of the Act; *Matter of Torres-Garcia*, 23 I&N Dec. 866, 873 (BIA 2006). The Applicant does not claim, and the record does not reflect, that he has remained outside of the United States for 10 years since his last departure from the country, as required.

Although the Applicant requests that we exercise our discretion to permit him to file a Form I-212 from within the United States, the Applicant is statutorily ineligible to seek permission to reapply for admission and we lack the authority to waive the requirements of the statute. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations). The Applicant has not submitted new evidence sufficient to establish his eligibility or established that our prior decision was incorrect based on the evidence in the record at the time, as required to meet the requirements of a motion to reopen and reconsider.

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[3] The Applicant submits copies of *Lopez Ventura v. Sessions*, 907 F.3d 306 (5th Cir. 2018) regarding the retroactive application of section 212(a)(2)(A)(i)(II) of the Act relating to inadmissibility for a conviction relating to a controlled substance, and *Vartelas v. Holder*, 566 U.S. 257 (2012), regarding the retroactive application of a provision of the Illegal Immigration Reform and Immigrant Responsibility Act to an LPR who committed a felony offense prior to that provision's effective date. He does not discuss the applicability of these cases to his situation aside from citing them when arguing that there is "an element of presumption against retroactivity," apparently in reference to his assertion that his legal entry with a TPS travel document in 2017 should retroactively cure his reentry after removal in 1998. We have addressed this argument at length in prior decisions and discuss it again on current motion.

[4] He also cites a settlement agreement in *CARECEN v. Jaddou*, Civil Action No. 20-2363 (2022), relating to the ability of certain TPS beneficiaries to reopen and dismiss their removal orders, but states that he does not qualify under this process. Its relevance to his case is therefore unclear.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.