U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28878940

Date: NOV. 28, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant, a native and citizen of Mexico, has applied for an immigrant visa and seeks 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) and unlawful presence under section 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Nebraska Service Center (Director) denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application) concluding the Applicant was inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, entering the United States without being admitted after having been ordered removed. The Director determined that because the Applicant had not remained outside the United States for 10 years since her last departure, the application must be denied. There is no exception or waiver for this ground of inadmissibility until 10 years after the Applicant's departure from the United States, and because those 10 years had not passed at the time of filing, the Director concluded that the Applicant would remain inadmissible even if the waiver application were approved. The Director denied the waiver application as a matter of discretion, as approving it would serve no purpose.

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.

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 lawful permanent resident 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.

On [redacted] 2001, the Applicant presented a border crossing card that belonged to someone else while seeking admission into the United States. She was placed into expedited removal and removed from the United States on [redacted] 2001. Approximately two months later, the Applicant entered the United States without inspection and remained until September 2021. The U.S. Department of State (DOS) found the Applicant inadmissible under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a year or more and then seeking admission to the United States within 10 years of her departure. Additionally, DOS determined the Applicant was inadmissible under section 212(6)(C)(i) of the Act for having committed fraud or misrepresentation and 212(a)(9)(A)(i) of the Act for having been removed from the United States.

The Applicant filed the instant waiver application for her inadmissibility under section 212(i) of the Act. She concurrently filed a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212), to seek an exception for her inadmissibility under section 212(a)(9)(C)(ii) of the Act. The Director denied the Form I-212, finding that the Applicant was statutorily ineligible to seek permission to reapply for admission because fewer than 10 years had passed since her last departure from the United States.[1]

Because no waiver exists for inadmissibility under section 212(a)(9)(C)(ii) of the Act, the Director found that the Applicant would remain inadmissible even if the instant waiver application were approved. Therefore, adjudicating the waiver application would not serve a purpose, and the Director denied the instant application as a matter of discretion.

The Applicant last departed from the United States in September 2021. She may not seek permission to reapply for admission until she has remained outside of the United States for at least 10 years from the date of that last departure. *See* section 212(a)(9)(C)(ii) of the Act. Because 10 years have not passed since the last time the Applicant departed the United States, even if the waiver application is approved, she will still be inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act. Therefore, adjudicating the waiver application would serve no purpose, and it will remain denied as a matter of discretion.

ORDER: The appeal is dismissed.

[1] The Applicant sought review of both the instant waiver application and the Form I-212 in one I-290B, Notice of Appeal or Motion. We consider one appeal on the I-290B. If the Applicant wishes to appeal the denial of the Form I-212, a separate I-290B would be needed.