U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27855536

Date: OCT. 16, 2023

Appeal of Los Angeles, California Field Office Decision

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

The Applicant, a native and citizen of Mexico, has applied to adjust status to that of a lawful permanent resident and 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 Los Angeles, California Field Office denied the application, concluding that the record did not establish that the Applicant was statutorily eligible to apply for permission to reapply for admission, even if a waiver was granted in her case. The matter is now before us on appeal. The Applicant argues the Director erred in finding her ineligible for the waiver.

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.

Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act.

However, section 212(a)(9)(C)(i) of the Act also provides that any noncitizen who has been ordered removed and who subsequently enters or attempts to reenter the United States without being admitted is inadmissible. Noncitizens found inadmissible under section 212(a)(9)(C)(i) of the Act may seek permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act, which provides that inadmissibility shall not apply to a noncitizen who seeks admission more than ten years after the date of their last departure from the United States if the Secretary of Homeland Security consents to their reapplying for admission prior to their attempt to be readmitted. A noncitizen may not apply for permission to reapply unless they are outside the United States and their last departure from the United States was at least ten years ago. See Matter of Torres-Garcia, 23 I&N Dec. 866 (BIA 2006); see also

Matter of Briones, 24 I&N Dec. 355 (BIA 2007); Matter of Diaz and Lopez, 25 I&N Dec. 188 (BIA 2010).

The record reflects that the Applicant applied for admission at a port of entry in May 1999, and presented a Form I-512 advance parole document. The inspecting officer determined that the document was fraudulent. The Applicant maintains that she believed the document to be authentic because she purchased the document from an individual who claimed to be a consular employee. The inspecting officer found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act, because the Applicant presented false documents to the inspecting officer in an attempt to obtain an immigration benefit (entry into the United States). The Applicant departed the United States under an order of expedited removal but, a few days later, she unlawfully entered the United States without admission. The Applicant has not departed the United States since that time.

The Director found that the Applicant's May 1999 reentry made her inadmissible under section 212(a)(9)(C) of the Act. Because no waiver exists for that ground of inadmissibility, and because the Applicant cannot reapply for permission to enter the United States until she departs the United States and remains abroad for ten years, the Director denied the waiver application as a matter of discretion. We agree with the Director's determination.

On appeal, the Applicant contends that she "is not inadmissible under INA §212(a)(9)(C)" because she "did not leave the United States after accruing more than a year of unlawful presence and then [try] to re-enter without inspection. She did not depart the U.S. with an outstanding removal order and subsequently [try] to re-enter without inspection." Section 212(a)(9)(C)(i)(II) of the Act plainly applies to "[a]ny alien who . . . has been ordered removed under section 1225(b)(1) of this title, section 1229a of this title, or any other provision of law." 8 U.S.C. § 1229a, section 240 of the Act, concerns removal proceedings before an immigration judge. But 8 U.S.C. § 1225(b)(1) – section 235(b)(1) of the Act – concerns expedited removals at ports of entry. The record reflects that the Applicant acknowledges that she "was served with the Form I-860 . . . , fingerprinted and walked back over the border." Form I-860 is a "Notice and Order of Expedited Removal." The events in 1999 constituted a removal from the United States for the purposes of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act.[1]

The Applicant is currently in the United States, and she has not remained outside of the country for at least 10 years, as required. Section 212(a)(9)(C)(ii) of the Act; Matter of Torres-Garcia, supra. She is therefore currently statutorily ineligible for permission to reapply for admission to the United States. Thus, the Director did not err in denying the waiver application as a matter of discretion. No purpose would be served in considering hardship to the Applicant's spouse and adjudicating the waiver request for fraud or willful misrepresentation of a material fact under section 212(a)(6)(C)(i) of the Act because the Applicant will remain inadmissible under section 212(a)(9)(C)(i) of the Act. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Therefore, the waiver application remains denied.

[1] We explained this previously in our April 21, 2022 decision reviewing the Applicant's appeal of the denial of her I-212.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met this burden.

ORDER: The appeal is dismissed.