U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29156328

Date: DEC. 7, 2023

Appeal of San Fernando Valley, California Field Office Decision

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

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks waivers under sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § l 182(i), (a)(9)(B)(v), to waive inadmissibility under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act.

The Director of the San Fernando Valley, California Field Office denied the application, concluding that the record did not establish that the Applicant was an applicant for admission and the waiver would serve no purpose. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant requests a decision on the merits of her waiver request.

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.

The Applicant states that the Director was incorrect to deny her application on a technicality and requests that her waiver application be decided on the merits of her claims of extreme hardship to her lawful permanent resident spouse. The Applicant does not contest the Director's finding of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act.

Section 212(a)(9)(C)(i)(I) 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 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)(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 have been outside the United States for more than ten years since the date of their last departure from the United States. *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 establishes that the Applicant first entered the United States in 1988, and then departed in 1995 after accruing more than one year of unlawful presence. The Applicant attempted to re-enter the United States using a lawful permanent resident (LPR) card that did not belong to her. The Applicant was placed in exclusion proceedings that were subsequently terminated. During her interview at the San Fernando Valley field office, the Applicant admitted to leaving the United States without advance parole in November or December of 2000 and re-entering without being admitted in August 2001, rendering her inadmissible under section 212(a)(9)(C)(i)(I) of the Act. As stated, the Applicant does not contest on appeal the Director's determination of her inadmissibility under this provision. To avoid inadmissibility under this section, an applicant must obtain consent from U.S. Citizenship and Immigration Services (USCIS) to reapply for admission after remaining outside of the United States for at least l0 years through the filing of the Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212). Section 212(a)(9)(C)(ii) of the Act; *Matter of Briones*, 24 I&N Dec. at 358-59. The record does not establish that the Applicant is statutorily eligible for permission to reapply for admission to the United States as she has not remained outside of the United States for more than 10 years after the date of her last departure.

Based on the above, the Director denied the Applicant's Form I-212 and accompanying application for permanent residence. The Director further denied the Form I-601 because the Applicant's Form I-212 and application for adjustment of status had been denied and approval would serve no purpose. On appeal, the Applicant requests that USCIS adjudicate her request for a waiver on the merits of her claim of extreme hardship so that she may seek re-entry from a consulate abroad. The applicant does not reference any error in law or fact in the Director's decision or cite to any pertinent precedent decision that compels USCIS to adjudicate her waiver request without an accompanying request for an immigrant visa abroad or application for adjustment of status.

A non-citizen seeking a waiver of inadmissibility under section 212(i) of the Act must be an applicant for admission. *See* 8 C.F.R. § 212.7(a)(1); *see also Matter of Rivas*, 26 I&N Dec. 130 (BIA 2013) (finding that a waiver under section 212 of the Act is not available to a noncitizen on a "stand alone" basis if they are not an arriving alien or applicant for adjustment of status). The Applicant has not made a request for an immigrant visa with the U.S. Department of State and is ineligible for adjustment of status as a result of the inadmissibility described above. Thus, no purpose would be served in adjudicating the Applicant's waiver of her inadmissibility for fraud and misrepresentation under section 212(a)(6)(C)(i) of the Act where she will remain inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

ORDER: The appeal is dismissed.