U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28398372

Date: NOV. 03, 2023

Appeal of San Diego, 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. § 1182(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.[1] The Director of the San Diego, California Field Office denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, as a matter of discretion because the Applicant would remain inadmissible under section 212(a)(9)(C)(i)(I) of the Act even if the waiver was granted for the ground of inadmissibility under section 212(a)(6)(C)(i) of the Act. The matter is now before us on appeal.

On appeal, the Applicant resubmits evidence already contained in the record and asserts that the waiver should be granted as a matter of discretion based on humanitarian reasons, to assure family unity, or because it would be in the public interest. The Applicant, however, does not contest the Director's finding that she is inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

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

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[1] During the pendency of the Applicant's appeal, USCIS issued policy guidance clarifying inadmissibility under section 212(a)(9)(B) of the Act. *See* 8 *USCIS Policy Manual* O.6, https://www.uscis.gov/policymanual; *see also* Policy Alert PA-2022-15, *INA 212(a)(9)(B) Policy Manual Guidance* (June 24, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates. The policy guidance clarifies that the statutory 3- or 10-year bar to readmission under section 212(a)(9)(B) of the Act begins to run on the day of departure or removal (whichever applies) after accrual of the period of unlawful presence, but a noncitizen subject to the 3- or 10-year bar is not inadmissible to the United States under section 212(a)(9)(B) of the Act unless they depart or are removed and seek admission within the 3- or 10-year period following their departure. *See* 8 *USCIS Policy Manual*, *supra*, at O.6(B). The policy guidance further clarifies that a noncitizen determined to be inadmissible under section 212(a)(9)(B) of the Act but who again seeks admission more than 3 or 10 years after the relevant departure or removal is no longer inadmissible under section 212(a)(9)(B) of the Act even if they returned to the United States, with or without authorization, during the statutory 3- or 10-year period because the statutory period after that departure or removal has ended. *See id.* The new policy applies to inadmissibility determinations made on or after June 24, 2022, and is dispositive of this appeal. *See* Policy Alert PA-2022-15, at 2. The Applicant is no longer inadmissible because more than 10 years have elapsed between her 2009 departure from the United States and the instant request for admission; the fact that she spent a portion of those 10 years in the United States is not relevant.

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.

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 1984, and then departed in 2009 after accruing more than one year of unlawful presence and re-entered without being admitted later that same year, 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 10 years through the filing of the Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal. *See* section 212(a)(9)(C)(ii) of the Act; *Matter of Briones*, 24 I&N Dec. at 358-59.[2] 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. Thus, the Director did not err in denying the waiver application as a matter of discretion, as 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)(I) of the Act where she will remain inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

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.

[2] A waiver to the ground of inadmissibility at section 212(a)(9)(C)(i) of the Act is available to individuals classified as VAWA self-petitioner under section 204 of the Act, 8 U.S.C. § 1154. However, there is no indication in the record that the applicant is classified as such.