



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 18764010

Date: APR. 19, 2022

Appeal of Los Angeles County Field Office Decision

Form I212, Application for Permission to Reapply for Admission

The Applicant seeks permission to reapply for admission to the United States under section 212(a)(9)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii), because he is admissible for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year.

The Director of the Los Angeles County Field Office denied the application, concluding that the record did not establish that he was eligible for consent to reapply for admission to the United States.

The matter is now before us on appeal. In the appeal, the Applicant asserts that he was a minor when he first entered the United States and therefore did not accrue unlawful presence prior to his last entry without admission.

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. Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking permission to reapply for admission to the United States and has been found inadmissible for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year.

Section 212(a)(9)(C)(i) of the Act provides that an alien 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."

Pursuant to section 212(a)(9)(C)(ii) of the Act, there is an exception for any "alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's re-embarkation 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 alien's reapplying for admission."

Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *See Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *See Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973); *see also Matter of Lee, supra*, at 278 (Finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character, and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience").

II. ANALYSIS

As noted in the Director's decision, the Applicant claims to have initially entered the United States as a child in 1983, whereas the Notice to Appear served on him on [REDACTED] 2005, indicates that he entered without inspection on or about July 31, 1996. He was granted voluntary departure on [REDACTED] 2005 and departed the United States the next day. The record indicates that the Applicant reentered the United States without inspection in September 2005 and has not since departed the United States.

The Director concluded that the Applicant is inadmissible under section 212(a)(9)(c)(i)(I) of the Act, as he accrued unlawful presence from April 1, 1997, until he voluntarily departed on [REDACTED] 2005, and then reentered without inspection approximately a month later. On appeal, the Applicant asserts that he could not have accumulated unlawful presence since he first entered the United States as a minor.¹ However, he does not cite to a relevant statute, regulation or administrative or court decision to support this contention. The current provisions under section 212(a)(9) of the Act became effective on April 1, 1997,² and that is the date that the Applicant, as a noncitizen who entered without inspection, began to accrue unlawful presence, which continued until he was granted voluntary departure on [REDACTED] 2005. Because he accrued more than one year of unlawful presence, and then reentered the United States without inspection, we agree with the Director's conclusion that he is inadmissible under section 212(a)(9)(c)(i)(I) of the Act.

As stated above, the exception to this inadmissibility provided for under section 212(a)(9)(c)(ii) of the Act requires that a noncitizen have spent more than 10 years outside of the United States since their last departure before applying. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007). Because the Applicant has remained in the United States since his last entry in September 2005, he is not eligible for consent to reapply for admission to the United States.

ORDER: The appeal is dismissed.

¹ The Applicant refers to "several dates of entry" in the decision, asserting that all occurred before he was 18 years of age. While the record includes other initial dates of entry, some of which occurred before he was 18, his age at the time of initial entry is not relevant to his accrual of unlawful presence or his inadmissibility.

² Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub.L. 104-208, 110 Stat. 3009 (1996).