



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

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

In Re: 17174695

Date: APR. 20, 2022

Appeal of Omaha, Nebraska Field Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant seeks conditional permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), because she will be inadmissible upon departing from the United States for having been previously ordered removed.

The Director of the Omaha, Nebraska Field Office denied the application. The Director concluded that the Applicant is statutorily ineligible for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act.

The matter is now before us on appeal. On appeal, the Applicant states that section 212(a)(9)(C)(ii) of the Act does not apply in her case.

We review the questions raised 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 remand the matter for the entry of a new decision consistent with our analysis below.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen who has been ordered removed, or who departed the United States while an order of removal was outstanding, is inadmissible for 10 years after the date of departure or removal. Noncitizens found inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act if, prior to the date of the re-embarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

Section 212(a)(9)(C)(i) of the Act provides that a 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." A noncitizen who is inadmissible under this section cannot reapply for admission until "more than 10 years after the date of the alien's last departure from the United States." Section 212(a)(9)(C)(ii).

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 immigration violations, standing alone, do not conclusively show lack of good moral character).

II. ANALYSIS

The Applicant entered the United States without admission in February 2006, and was ordered removed in 2007, but there is no indication that she has ever departed the United States since her initial entry. Upon departure from the United States, she will become inadmissible under section 212(a)(9)(A)(ii) of the Act.

The Director denied the application, stating that, because the Applicant was ordered removed from the United States, and she entered the United States without admission, section 212(a)(9)(C)(ii) of the Act renders the Applicant ineligible to reapply for admission for ten years from her most recent departure (which apparently has yet to occur, because the Applicant has evidently never left the United States).

On appeal, the Applicant argues that the provisions of section 212(a)(9)(C)(i) and (ii) of the Act apply only to individuals who depart the United States after accumulating unlawful presence, or under an order of removal, and *then* re-enter, or attempt to re-enter, without admission. We agree with the Applicant. The cited statutory language refers in the past tense to an individual who "has been unlawfully present" or "has been ordered removed," and in the present tense to an individual "who enters or attempts to reenter the United States without being admitted." This is further evident from the heading of section 212(a)(9)(C) of the Act, which refers to individuals who are "unlawfully present after *previous* immigration violations." The instructions to Form I-212 specify, on page 7, that the unlawful entry (or attempt) must have occurred after the order of removal to result in inadmissibility under section 212(a)(9)(C) of the Act.¹ Because the record does not indicate that the Applicant left the United States after her initial entry into the United States without authorization in February 2006, she does not appear to be inadmissible under section 212(a)(9)(C) of the Act.

Because the Applicant does not appear to be inadmissible under section 212(a)(9)(C)(i) of the Act, we find it appropriate to remand the matter to the Director to determine whether the Applicant merits permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act as a matter of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

¹ See form instructions at <https://www.uscis.gov/sites/default/files/document/forms/i-212instr.pdf>; *see also* 8 C.F.R. § 103.2(a)(1), which incorporates the form instructions into the regulations.