



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

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

In Re: 16692295

Date: APR. 20, 2022

Appeal of Charlotte, North Carolina Field Office Decision

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

The Applicant has filed a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal. *See* Section 212(a)(9)(A)(iii), (C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), (C)(ii). The Director of the Charlotte, North Carolina Field Office denied the application on discretion. The Applicant appeals. Upon *de novo* review, we will dismiss the appeal, as the Applicant has not shown that any purpose would be served at this time to grant her Form I-212 application, seeking permission to reapply for admission.

I. LAW

As explained in the Form Instructions, a noncitizen may file a Form I-212 application if he or she is inadmissible under Section 212(a)(9)(A) or (C) of the Act. A noncitizen is inadmissible under Section 212(a)(9)(A) of the Act if he or she was removed from the United States or departed the United States on his or her own after being ordered removed, and subsequently seeks admission to the United States or seeks adjustment of status to that of a lawful permanent resident.¹ Under the regulation at 8 C.F.R. § 212.2(j), a noncitizen whose departure will execute an order of removal may, prior to leaving the United States, seek conditional approval of a Form I-212 application for permission to reapply for admission.

A noncitizen is inadmissible under Section 212(a)(9)(C) of the Act if he or she was unlawfully present in the United States for an aggregate period of more than one year, or was ordered removed, and who then enters or attempts to reenter the United States without being admitted. Unlike someone who is inadmissible under Section 212(a)(9)(A) of the Act, a noncitizen who is inadmissible under Section 212(a)(9)(C) of the Act may not seeking a conditional approval of a Form I-212 application while he or she is still in the United States. *See* Section 212(a)(9)(C)(ii) (providing that a noncitizen must have

¹ *See* Pages 1-2 of *Instructions for Application for Permission to Re-apply for Admission Into the United States After Deportation or Removal* (version 06/09/20), <https://www.uscis.gov/sites/default/files/document/forms/i-212instr.pdf>.

remained outside the United States for more than 10 years before being eligible to seek permission to reapply for admission).

II. ANALYSIS

In this case, the Applicant has not shown that she is inadmissible under Section 212(a)(9)(A) of the Act, because she has not been ordered removed. Rather, the Applicant acknowledges, and the record shows, that she is currently in removal proceedings under Section 240 of the Act, 8 U.S.C. § § 1229a.² Page 3 of her Form I-212 application indicates that she has not been removed from the United States, and the record does not indicate that she has been issued an order of removal. She is therefore not inadmissible under Section 212(a)(9)(A) of the Act, as she has not been removed from the United States, and she has not departed the United States on her own after being issued an order of removal. Additionally, the regulation 8 C.F.R. § 212.2(j), which allows a noncitizen to seek a conditional approval of a Form I-212 application, does not apply in this case, as the Applicant does not have an order of removal.

Similarly, the Applicant has not shown that she is inadmissible under Section 212(a)(9)(C) of the Act, because she has not entered or attempted to reenter the United States after she accrued unlawful presence in the United States for a period of more than one year, or after she had been ordered removed. According to her April 2020 statement, in 1994, she entered the United States in a “black truck” where she “sat in the seat right behind the passenger.” She claimed that the driver of the truck “told [her and others] to duck” as he drove through “the entrance to the border” between [redacted] Mexico, and the United States. The Applicant indicated that she has not left the United States since her 1994 entry. While she has accrued more than a year of unlawful presence in the United States, she has not entered or attempted to reenter the United States after accruing unlawful presence. As such, she has not shown that she is inadmissible under Section 212(a)(9)(C) of the Act. Indeed, she indicated on page 3 of her Form I-212 application that she has not “entered or attempted to enter the United States without being admitted or paroled, after having been unlawfully present in the United States . . . for a period of more than one year.” Regardless, as she is currently in the United States, and that she has not been outside of the country for more than 10 years, she is not eligible to seek permission to reapply for admission under Section 212(a)(9)(C)(ii) of the Act.

Based on the record before us, it appears that if the Applicant departed the United States, her unlawful presence would render her inadmissible under Section 212(a)(9)(B)(i)(II) of the Act. Specifically, Section 212(a)(9)(B)(i)(II) of the Act provides that a noncitizen who “has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such [noncitizen’s] departure or removal from the United States . . . is inadmissible.” While the Act provides a waiver for this ground of inadmissibility, a noncitizen should file a Form I-601 (Application for Waiver of Grounds of Inadmissibility) or a Form I-601A (Application for Provisional Unlawful Presence Waiver), not a Form I-212 application, to initiate an application for such waiver. *See* Section 212(a)(9)(B)(v) of the Act.³

² As noted in the decision of the Director of Charlotte, North Carolina Field Office, the Applicant was served a notice to appear on [redacted] 2020, which initiated removal proceedings against her under Section 240 of the Act. The record, however, does not show that an order of removal has been issued.

³ Both Form I-601 application and Form I-601A application require a noncitizen to show that if the waiver application

III. CONCLUSION

Based on the reasons we have discuss above, we will dismiss the Applicant's appeal. The Applicant has not demonstrated that any purpose would be served at this time to grant her Form I-212 application, because she is not inadmissible under either Section 212(a)(9)(A) or (C) of the Act. *See* Section 212(a)(9)(A)(iii), (C)(ii) of the Act.

ORDER: The appeal is dismissed.

were denied, the noncitizen's United States citizen or lawful permanent resident spouse or parent would suffer extreme hardship. Section 212(a)(9)(B)(v) of the Act. On her Form I-212 application, the Applicant indicated that she is "Single, Never Married," and that her parents live in Mexico.