U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19627837

Date: APR. 21, 2022

Appeal of Los Angeles, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), for unlawful presence.[1]

The Director of the Los Angeles, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application). The Director concluded that the Applicant is statutorily ineligible to apply for permission to reapply for admission, and that, therefore, approval of the waiver application would serve no purpose.

The matter is now before us on appeal. On appeal, the Applicant contends that she is not inadmissible under section 212(a)(9)(C)(i) of the Act, and that the Director should therefore have adjudicated the waiver application on its merits.

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 dismiss the appeal.

Section 212(a)(9)(B)(ii) of the Act provides that a noncitizen is deemed to be unlawfully present if in the United States after the expiration of a period of authorized stay or is in the United States without being admitted or paroled.

Section 212(a)(9)(C)(i)(II) of the Act provides that any noncitizen who has been ordered removed 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) 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

[1] Although she did not indicate it on the waiver application, the Applicant also appears to be inadmissible under section 212(a)(6)(C)(i) of the Act because she presented false documentation during inspection for admission into the United States. As such, she would also require a waiver under section 212(i) of the Act. On appeal, the Applicant contends that she is not inadmissible under this additional ground, because she purchased a Form I-512 parole document believing it to be authentic. We need not discuss this issue in depth because it would not affect the outcome of the appeal.

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 Applicant applied for admission at a port of entry in [redacted] 1999, and presented a Form I-512 advance parole document. The inspecting officer determined that the document was fraudulent. The Applicant maintains that she believed the document to be authentic because she purchased the document from an individual who claimed to be a consular employee. The inspecting officer found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act, because the Applicant presented false documents to the inspecting officer in an attempt to obtain an immigration benefit (entry into the United States). The Applicant departed the United States under an order of expedited removal but, a few days later, she unlawfully entered the United States without admission. The Applicant has not departed the United States since that time.

The Director found that the Applicant's [redacted] 1999 reentry made her inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Because no waiver exists for that ground of inadmissibility, and because the Applicant cannot reapply for permission to enter the United States until she departs the United States and remains abroad for ten years, the Director denied the waiver application as a matter of discretion. We agree with the Director's determination.

On appeal, the Applicant contends that she "is not inadmissible under INA §212(a)(9)(C)(i)(II)" because "she was not formally deported from the United States" "following a hearing before an immigration judge." The statute, however, does not require such a hearing. Section 212(a)(9)(C)(i)(II) plainly applies to "[a]ny alien who . . . has been ordered removed under section 1225(b)(1) of this title, section 1229a of this title, or any other provision of law." 8 U.S.C. § 1229a, section 240 of the Act, concerns removal proceedings before an immigration judge. But 8 U.S.C. § 1225(b)(1) – section 235(b)(1) of the Act – concerns expedited removals at ports of entry. The Applicant acknowledges that she "was served with the Form I-860 . . . , fingerprinted and walked back over the border." Form I-860 is a "Notice and Order of Expedited Removal." The events in 1999 constituted a removal from the United States for the purposes of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act.

The Applicant asserts that section 212(a)(9)(C)(ii) of the Act requires only the passage of ten years since her last departure, and does not require her to be outside the United States during that ten-year period. The Board of Immigration Appeals rejected this argument, stating that a noncitizen cannot "circumvent the statutory 10-year limitation on section 212(a)(9)(C)(ii) waivers by simply reentering unlawfully before requesting the waiver. After all, it is the alien's unlawful reentry without admission that makes section 212(a)(9)(C)(i) applicable in the first place." *Matter of Torres-Garcia*, 23 I&N Dec. at 876.

The Applicant asserts that "she is a Beneficiary of a Form I-130 Petition filed on her behalf on or before April 20, 2001; that she was physically present in the United States on December 21st, 2000 and, therefore, that she is eligible to adjust status in the United States under the grandfathering provisions of INA sec. 245(i)." *Matter of Torres-Garcia* addresses this argument as well, stating:

"The official position of the [Department of Homeland Security] is that section 245(i) adjustment . . . is unavailable to recidivist immigration violators described by section 212(a)(9)(C)." *Id.* at 870 n.4.

As noted above, *Matter of Torres-Garcia* effectively addresses all of the Applicant's key arguments. On appeal, the Applicant does not cite any binding authority that overruled or superseded that precedent decision. The Applicant has not overcome the determination that she will remain statutorily ineligible to reapply for entry into the United States until she remains outside the United States for ten years. Therefore, the Director did not err in denying the waiver application as a matter of discretion. No purpose would be served in considering hardship to the Applicant's qualifying relatives and adjudicating the waiver request for unlawful presence under section 212(a)(9)(B)(v) of the Act because the Applicant will remain inadmissible under section 212(a)(9)(C)(i)(II) of the Act. Therefore, the waiver application remains denied.

ORDER: The appeal is dismissed.