



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

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

In Re: 12994674

Date: MAR. 8, 2021

Appeal of Providence, Rhode Island Field Office Decision

Form I-212, 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i).

The Director of the Providence, Rhode Island Field Office denied the application, concluding that the Applicant is inadmissible under section 212(a)(9)(C)(i) of the Act. The Director noted that she departed the United States in August 1998 after an immigration judge granted her voluntary departure, subsequent to accruing more than one year of unlawful presence, then returned to the United States in 2004 without being inspected or admitted. The Director determined that the Applicant did not meet the requirements for obtaining consent to reapply for admission under section 212(a)(9)(C)(ii) of the Act because she has remained in the United States since her unlawful reentry in 2004.

On appeal, the Applicant submits new evidence and asserts that she should be allowed to process her Form I-212 from within the United States for humanitarian reasons.

In these proceedings, an applicant has the burden of proving eligibility for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Applicant has not met this burden.

I. LAW

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. . . and who enters or attempts to reenter the United States without being admitted is inadmissible.” The accrual of unlawful presence for purpose of inadmissibility determinations under section 212(a)(9)(B)(i) or 212(a)(9)(C)(i) of the Act begins no earlier than the effective date of the amendment enacting this section, which is April 1, 1997.

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 reembarkation 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.”

II. ANALYSIS

The record reflects that the Applicant entered the United States in 1992 without being inspected or admitted, was placed in removal proceedings in 1998, and was granted voluntary departure by an immigration judge. The Applicant departed in August 1998, returned to the United States in October 2004 without being inspected or admitted, and has remained here since.

The Director denied the Form I-212 application, finding that the Applicant is inadmissible under section 212(a)(9)(C)(i) of the Act due to her 2004 unlawful reentry into the United after accruing more than one year of unlawful presence. The Director further determined that the Applicant did not meet the requirements for obtaining consent to reapply for admission under section 212(a)(9)(C)(ii) of the Act because she has remained in the United States since her unlawful reentry in 2004.

On appeal, the 52-year-old Applicant asserts that her Form I-212 should be processed from within the United States for humanitarian reasons, in part because of her age, and she submits new evidence, such as news articles about the coronavirus pandemic and poor health conditions in Brazil and Latin America, to support her assertion. The Applicant contends that the Director failed to consider that requiring her to return to Brazil would put her health at risk, in light of her age and Brazil's poverty, crime, and inadequate pandemic response.

Upon review, the record supports the finding that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act for departing the United States in August 1998 after accruing one year or more of unlawful presence,¹ and then reentering the United States in 2004 without being inspected or admitted. A foreign national who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the foreign national has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the Applicant's last departure was at least 10 years ago, the Applicant has remained outside the United States, and USCIS has consented to the Applicant's reapplying for admission.

In the present matter, the Applicant has remained in the United States since her unlawful reentry in 2004, and she is not eligible to seek an exception to this inadmissibility. The application for permission to reapply for admission must therefore remain denied.

ORDER: The appeal is dismissed.

¹ The Applicant accrued unlawful presence from April 1, 1997, to 1998, the date she was granted voluntary departure by the immigration judge.