U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29949849

Date: JANUARY 25, 2024

Appeal of Los Angeles, California Field Office Decision

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

The Applicant seeks advance 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).[1] The Director of the Los Angeles, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the Applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act for entering the United States without being admitted after having previously been ordered removed. The Director then determined that the Applicant did not meet the requirements for permission to reapply for admission because she has not remained outside the United States for 10 years since her last departure. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions 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.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides that any noncitizen, other than an "arriving alien" described in section 212(a)(9)(A)(i), who has been ordered removed or departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of a noncitizen convicted of an aggravated felony) is inadmissible. 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) if, prior to the date of the reembarkation 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.

[1] The Applicant currently resides in the United States, and she is seeking conditional approval of her application under the regulation at 8 C.F.R. § 212.2(j) before departing the United States to apply for an immigrant visa. The approval of her application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if she fails to depart.

Section 212(a)(9)(C)(i)(II) of the Act provides that any noncitizen who has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible. Noncitizens found inadmissible under section 212(a)(9)(C) of the Act may seek permission to reapply for admission under section 212(a)(9)(C)(ii), which provides that inadmissibility shall not apply to a noncitizen seeking admission more than ten years after the date of last departure from the United States if, prior to the 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 noncitizen's reapplying for admission.

II. ANALYSIS

The issue presented on appeal is whether the Applicant is eligible to obtain permission to reapply for admission to the United States. The record reflects that in 2009, the Applicant was removed from the United States. In 2014, she was apprehended upon attempting to enter the United States without inspection and her prior removal order was reinstated. She was briefly detained and then released under an order of supervision. In March 2019, the Applicant's third request for a stay of removal was denied.

A noncitizen who is inadmissible under section 212(a)(9)(C)(i)(II) of the Act may not seek permission to reapply unless they have been outside the United States for more than 10 years since the date of their last departure from the United States. Matter of Torres-Garcia, 23 I&N Dec. 866, 873 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, it must be the case that the noncitizen's last departure was at least 10 years ago, they have remained outside the United States since that departure, and USCIS has granted them permission to reapply for admission into the United States. Id.

In this case, the Applicant's last departure occurred in 2009 and she did not remain outside the United States for 10 years since that departure; instead, she attempted to unlawfully entered the United States in 2014. She is therefore statutorily ineligible to apply for permission to reapply for admission. As such, we will not address whether the Applicant merits permission to reapply under section 212(a)(9)(A)(iii) of the Act as matter of discretion, as granting this relief would not result in the Applicant's admissibility to the United States. Accordingly, the Form I-212 remains denied.

ORDER: The appeal is dismissed.