



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: Office: NEBRASKA SERVICE CENTER

JAN 28 2014  
IN RE:

APPLICATION: Application for Permission to Reapply for Admission into the United States after  
Deportation or Removal under Section 212(a)(9)(C) of the Immigration and Nationality  
Act, 8 U.S.C. § 1182(a)(9)(C)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the Director, Nebraska Service Center, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China who was found to be inadmissible under section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been ordered removed and subsequently entering the United States without admission. He now seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), in order to reside in the United States.

The Director found that ten years have not elapsed since the applicant's last departure from the United States and therefore he did not meet the requirements for permission to reapply for admission after removal; the Director denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), accordingly. *Decision of the Director*, dated August 7, 2013.

On appeal, the applicant's spouse asserts that section 212(a)(9)(C)(i)(II) of the Act does not apply to the applicant, and she details hardship to their family. *Letter in Support of Appeal*, dated September 6, 2013.

The record includes, but is not limited to, the applicant's spouse's letter, copies of prior unrelated AAO decisions and the applicant's immigration records. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act states in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an 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 has consented to the alien's reapplying for admission.

The record reflects that the applicant arrived at John F. Kennedy International Airport on October 28, 1995, and requested asylum. After his asylum application was denied, an immigration judge ordered him deported *in absentia* on September 16, 1996. The applicant states on his Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601)<sup>1</sup> and in a December 5, 2012 statement, that he left the United States before he was ordered deported, in May 1996. However, the record includes no supporting documentary evidence of his departure from the United States. He subsequently entered the United States without inspection in January 2011 and departed in May 2011.

The applicant's spouse asserts that section 212(a)(9)(C)(i)(II) of the Act does not apply to the applicant, as this section does not apply to entries before April 1, 1997, and the applicant was in the United States for less than 180 days between January 2011 until May 2011. She provides copies of AAO decisions in other cases as support for her position. The cases submitted differ from the applicant's, in that they reflect deportation or exclusion orders and subsequent re-entries all occurring before April 1, 1997. Moreover, only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on Service officers. The decisions the applicant's spouse submits are unpublished and not designated as precedent decisions. The findings made in the other AAO decisions, therefore, have no binding precedential value for purposes of the applicant's case.

The AAO notes that the applicant's entry subsequent to his removal order was after April 1, 1997; he re-entered without admission in January 2011, according to his statement on the Form I-601 he submitted in January 2013. Moreover, although the applicant's spouse asserts he was in the United States for less than 180 days in 2011, the applicant's period of unlawful presence is not considered under section 212(a)(9)(C)(i)(II) of the Act. Therefore, he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed in 1996 and subsequently entering the United States without being admitted in 2011.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien 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 ten years ago, the applicant has remained outside the United States *and* USCIS has consented to the applicant's reapplying for admission. The applicant claims to have departed from the United States in May 2011. He is thus currently statutorily ineligible to apply for permission to reapply for admission.

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<sup>1</sup> The director closed the application on June 9, 2013, because the applicant had not been found inadmissible by the U.S. consulate in Guangzhou.

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*NON-PRECEDENT DECISION*

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In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.