



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **OCT 01 2014** OFFICE: PHILADELPHIA FILE:

IN RE:

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

ON BEHALF OF APPLICANT:

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 Field Office Director, Philadelphia, Pennsylvania, denied the Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212), and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who attempted to procure admission to the United States on November 4, 2000, by presenting a border crossing card (BCC) belonging to another person. Border officials determined that he was inadmissible, ordered him removed, and removed him from the United States. *See Form I-860, Notice and Order of Expedited Removal*, November 4, 2000; *Form I-296, Notice to Alien Ordered Removed/Departure Verified*, November 4, 2000. The record indicates that the applicant subsequently entered the United States without inspection at Nogales, Arizona, and thus was found to be inadmissible to the United States 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). He seeks permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), in order to adjust status as the beneficiary of an approved immigrant petition.

The field office director concluded the applicant had failed to show that he had been admitted or inspected and was therefore inadmissible under section 212(a)(9)(C)(i)(II) of the Act for having reentered the United States without admission after having been ordered removed. *Decision of Field Office Director*, April 27, 2012. Based on the applicant's presence in the United States without admission, the field office director determined he was ineligible for permission to reapply for admission and, accordingly, denied the Form I-212.

On appeal, counsel contends that the applicant is eligible for consent to reapply for admission without leaving the country as more than ten years have elapsed since he was removed. The record evidence includes applications for immigration benefits and supporting documents; birth, marriage, and naturalization certificates; identification documents, including passports, drivers licenses, and green cards; financial information; criminal history; and removal documents. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(C) of the Act provides, in pertinent part:

Aliens Unlawfully Present After Previous Immigration Violations.-

(i) In General. - Any alien who-

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(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 of Homeland Security has consented to the alien's reapplying for admission.

It is undisputed that the applicant was removed from the United States under a removal order on November 4, 2000 and later reentered the country without admission or parole. Further, we note that the applicant presently resides in the United States. We therefore concur in the field office director's determination that the applicant is ineligible to seek consent to reapply for admission.

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 ten 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), 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. In the present matter, the applicant is still present in the United States, and he must depart and remain outside the United States for ten years before he is eligible for permission to reapply. He is currently statutorily ineligible to apply for permission to reapply for admission.

We note that the regulation at 8 C.F.R. § 212.2(g)(2), which counsel cites as permitting the applicant to seek consent to reapply at this time, pertains to filing of Form I-212 in conjunction with an application for parole and does not apply to the applicant. Further, although counsel claims that the applicant may submit a Form I-212 together with an application for adjustment of status, this relief is only available when applying for permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As noted above, the applicant is currently statutorily ineligible for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act.

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.