U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-H-Z-

DATE: DEC. 17, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-212, APPLICATION FOR PERMISSION TO REAPPLY FOR ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR REMOVAL

The Applicant, a native and citizen of China, seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On October 2, 2014, the Director noted that the Applicant had been ordered removed in August 2003, and departed the United States in July 2010. The Director further stated that the Applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than one year. The Director concluded that as the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied, this remaining inadmissibility was a negative factor that warranted denial of the Form I-212 as a matter of discretion. On January 23, 2015, the Director affirmed his decision to deny the Form I-212, noting that the grounds for denial had not been overcome on motion.

On appeal, the Applicant references the appeal for his Form I-601 and asserts that his Form I-212 should be approved if his Form I-601 appeal is sustained. The entire record was reviewed and considered in rendering this decision.

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

> (A) Certain alien previously removed.-
>
> > (i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's 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 an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year...and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . . .

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General (Secretary) that the refusal of

> admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien…

As the record establishes, the Applicant entered the United States without authorization in July 1997. In February 1998, the Applicant was placed in removal proceedings. He subsequently applied for asylum. In July 1999, the Applicant's asylum application was denied and he was ordered removed. In August 2002, his case was remanded back to the Immigration Court so that he could apply for adjustment of status. In September 2003, the Immigration Judge denied the Applicant's adjustment of status and re-implemented the July 1999 decision to remove the Applicant. A subsequent appeal was dismissed in August 2004 and the Applicant was removed to China in July 2010.

The Applicant does not contest that he is inadmissible under section 212(a)(9)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A), as a result of his removal. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. The record establishes that the Applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having accrued more than one year of unlawful presence in the United States. His Form I-601 has been denied and a subsequent appeal has been dismissed by this office in a separate decision. Consequently, no purpose would be served in considering his application for permission to reapply for admission at this time. Accordingly, the appeal is dismissed as a matter of discretion.

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.

Cite as *Matter of K-H-Z-*, ID# 13969 (AAO Dec. 17, 2015)