



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

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

MATTER OF F-J-M-R-

DATE: OCT. 27, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE 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 Mexico, seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii). The District Director, San Diego, California denied the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal. A subsequent appeal and three motions to reopen and reconsider were denied by the Administrative Appeals Office (AAO). This matter is now before us on a motion to reopen and a motion to reconsider. The motions will be denied.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act for entering the United States without admission after having been removed. The Applicant seeks permission to reapply for admission into the United States.

In a June 11, 2012, decision, the Director determined that the Applicant is subject to section 212(a)(9)(C)(i)(II) of the Act and has not remained outside the United States for ten years following his last departure, and denied the Applicant's Form I-212 accordingly. On January 30, 2013, we decided on appeal that the Director properly denied the Applicant's Form I-212. In our September 6, 2013, decision on motion, we determined that the Applicant's unlawful entry following his removal, leading to his inadmissibility pursuant to section 212(a)(9)(C)(i)(II) of the Act, was discovered independently of information submitted in connection with his application under section 245A of the Act. We further found that there is no indication that the Applicant's rights as a class member under "late amnesty" litigation allowed him to enter the United States without inspection. As such, we affirmed our previous decision.

In response to a second motion to reopen and reconsider, we found that the information relating to the Applicant's unlawful entry was discovered from sources independent of his legalization application. We also found that the Applicant became inadmissible to the United States pursuant to section 212(a)(9)(C) of the Act on March 27, 2005, after his unlawful re-entry to the United States subsequent to his removal, and he was granted advance parole two months after he became inadmissible pursuant to this section. As such, on February 3, 2014, we affirmed our previous two decisions.

In response to the third motion, we addressed the Applicant's requests that we consider the Board of Immigration Appeals (the Board) decision in *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012). We agreed with the Applicant that the Board, in *Matter of Arrabally and Yerrabelly*, held that an alien who leaves the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act does not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. However, we distinguished the Applicant's case from *Matter of Arrabally and Yerrabelly* because the Applicant's inadmissibility was triggered on March 27, 2005, two months before he was granted advance parole, when he illegally re-entered the United States for his fingerprint appointment. We noted that the Applicant's inadmissibility was not triggered by any departure pursuant to a grant of advance parole. Accordingly, we found that the Board's decision in *Matter of Arrabally* does not cure the Applicant's inadmissibility, and he remained inadmissible under section 212(a)(9)(C) of the Act.

In the instant motion, the Applicant requests that we again reconsider our previous decisions. Specifically, the Applicant claims that the Board in *Matter of Arrabally and Yerrabelly* examined the intent of Congress and used a "common sense" approach in its determination. He further asserts that the Applicant would not be inadmissible under section 212(a)(9)(C) of the Act for attending his biometrics appointment, if the Applicant's case was similarly analyzed. No new evidence was provided in support of this motion, aside from the statement accompanying the Form I-290B, Notice of Appeal or Motion.

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

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.

As noted in our previous decisions, the Applicant was ordered removed to Mexico by an immigration judge on October 22, 2002, and the Applicant's appeal was dismissed by the Board on January 27, 2004. The Applicant was removed from the United States on August 19, 2004. The Applicant subsequently filed a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the INA, on March 9, 2005, in which he listed his home address in the United States. Accordingly, a biometrics appointment notice was sent to the Applicant at his listed home address. The Applicant re-entered the United States from Mexico without admission or parole on or about March 27, 2005, so he could attend this appointment. The Applicant subsequently acknowledged in a sworn statement that he re-entered the United States "over the gate" for fingerprints, then went back to Mexico. Accordingly, the Applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for re-entering the United States without admission or parole subsequent to his removal. Following his return to Mexico, the Applicant was granted advance parole to pursue his application for temporary resident status under 245A of the Act. He was paroled into the United States on July 3, 2005.

As we stated above, *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the Board held that an alien who leaves the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act does not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. *Id.* Here, the Applicant's inadmissibility was triggered on March 27, 2005, two months before he was granted advance parole, when he illegally re-entered the United States for his fingerprint appointment. The Applicant is not inadmissible for any departure pursuant to a grant of advance parole.

In the instant motion, the Applicant indicates that the Board in *Matter of Arrabally and Yerrabelly* examined the intent of Congress and used a "common sense" approach. *Arrabally*, 25 I&N Dec. at 775. He asserts that, if the instant case was similarly examined, the Applicant's inadmissibility, triggered by his attendance at a biometrics appointment, under section 212(a)(9)(C) of the Act would not have been applied. While we agree that the Board in *Matter of Arrabally and Yerrabelly* interpreted the case guided by common sense and with the intentions of Congress in mind, the Board was examining a very narrow issue regarding whether an alien who leaves the United States pursuant to a grant of advance parole makes a departure within the meaning of section 212(a)(9)(B)(i)(II) of the Act. *Id.* In its decision, the Board specifically indicated, "we hold only that an alien cannot become inadmissible *under section 212(a)(9)(B)(i)(II)* solely by virtue of a trip abroad undertaken pursuant to a grant of advance parole... our decision does not... call into question the applicability of any other inadmissibility ground." *Arrabbally*, 25 I&N Dec. at 780. Furthermore, in large part, the Board in *Matter of Arrabally and Yerrabelly* analyzed the meaning of a "departure." The Board did not examine whether an Applicant's re-entrance into the United States for a biometrics appointment after a removal order would subject him or her to section 212(a)(9)(C) of the Act.

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*,

Matter of F-J-M-R-

25 I&N Dec. 188 (BIA 2010). 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. In the present matter, the Applicant last departed the United States on or about March 27, 2005, and he has not remained outside the United States. As such, the Applicant is currently statutorily ineligible to apply for permission to reapply for admission.

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

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of F-J-M-R*, ID# 14174 (AAO Oct. 27, 2015)