



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

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

MATTER OF R-D-O-

DATE: OCT. 28, 2015

APPEAL OF MANCHESTER FIELD 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 Acting Field Office Director, Manchester, New Hampshire, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Director determined that the Applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act, for having procured entry into the United States without authorization after removal. The Director further determined that the Applicant was ineligible for any relief under the Act due to the reinstatement of his removal order. The Director denied the Form I-212 accordingly.

On appeal, filed in September 2012 and received in this office in January 2015, the Applicant asserts that he departed the United States pursuant to a voluntary departure order in 1996, prior to the 1999 removal order. Further, the Applicant maintains that section 212(a)(9)(C)(i)(II) of the Act does not apply because he maintains that after departing the United States pursuant to the voluntary departure order in 1996, he did not subsequently procure entry to the United States without authorization. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(A) Certain aliens 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 five 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 alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary of the Department of Homeland Security] has consented to the alien's reapplying for admission.

(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.

Section 241(a)(5) of the Act provides in pertinent part:

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being

reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

The regulation at 8 C.F.R. § 241.8 states that:

(a) [A]n alien who illegally reenters the United States after having been removed, or having departed voluntarily, while under an order of exclusion, deportation, or removal shall be removed from the United States by reinstating the prior order. The alien has no right to a hearing before an immigration judge in such circumstances. In establishing whether an alien is subject to this section, the immigration officer shall determine the following:

(1) Whether the alien has been subject to a prior order of removal. . . . (2) The identity of the alien. . . . (3) Whether the alien unlawfully reentered the United States

(b) [I]f an officer determines that an alien is subject to removal under this section, he or she shall provide the alien with written notice of his or her determination. The officer shall advise the alien that he or she may make a written or oral statement contesting the determination. If the alien wishes to make such a statement, the officer shall allow the alien to do so and shall consider whether the alien's statement warrants reconsideration of the determination.

(c) Order. If the requirements of paragraph (a) of this section are met, the alien shall be removed under the previous order of exclusion, deportation, or removal in accordance with section 241(a)(5) of the Act.

The record reflects that the Applicant entered the United States without inspection on or around January 22, 1989. In May 1994, the Applicant filed the Form I-589, Application for Asylum and Withholding of Removal, using his own name. In November 1996, the Applicant was apprehended and placed in removal proceedings under an assumed name. He received a grant of voluntary departure on December 4, 1996 and subsequently departed pursuant to that order on December 4, 1996.

The record indicates that the Applicant failed to appear for his asylum interview and was referred to immigration court on December 11, 1998. On January 19, 1999, he was ordered removed *in absentia*. The Applicant subsequently entered the United States with a K-1 fiancé visa on June 25, 2001. We note that the record establishes that the Applicant willfully misrepresented himself to obtain his K-1 fiancé visa and this rendered him inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation. However, he received a Form I-601 waiver approval on July 12, 2011 for this ground of inadmissibility.

On May 1, 1997, the legacy INS issued a memorandum providing general guidance for applying section 212(a)(9) of the Act. This guidance stated the following regarding section 212(a)(9)(A):

It should be noted that . . . section 212(a)(9)(A) of the Act applies only if the alien has departed or been removed from the United States *subsequent* [emphasis added] to issuance of an order. [Memorandum from Louis D. Crocetti, Jr., Associate Commissioner, Office of Examinations, Immigration and Naturalization Service, *Processing of section 245(i) adjustment applications on or after the October 1, 1997 sunset date; Clarification regarding the applicability of certain new grounds of inadmissibility to 245(i) applications*, HQ50/5.12-96Act.034 (May 1, 1997).]

A March 31, 1997 legacy INS memorandum also states that only those individuals who have been removed or have departed the United States after the issuance of a removal order are subject to the provisions of section 212(a)(9)(A). Memorandum from Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs, Immigration and Naturalization Service, *Implementation of section 212(a)(6)(A) and 212(a)(9) grounds of inadmissibility*, HQIRT 50/5.12-96act.026 (March 31, 1997).

In the present case, the record establishes that the Applicant departed the United States on December 4, 1996, approximately two years prior to the date on which the immigration judge ordered him removed. In that the record establishes that he left the United States prior to the date on which he was ordered removed, the Applicant is not inadmissible to the United States under section 212(a)(9)(A) of the Act. Accordingly, he is not required to file the Form I-212 to seek an exception under section 212(a)(9)(A)(iii) of the Act.

The record also establishes that the Applicant is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act or section 241(a)(5) of the Act, which apply to individuals that have entered the United States without being admitted after having been ordered removed from the United States. The record reflects that the Applicant was admitted to the United States with a K-1 fiancé visa on June 25, 2001. The Applicant was admitted after being inspected, albeit using a visa that was obtained by fraud or willful misrepresentation. His admission therefore was procedurally regular. *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010); *see also Matter of Areguillin*, 17 I&N Dec. 308 (1980); and *Matter of G-*, 3 I&N Dec. 136 (BIA 1948). As such, the Applicant is not subject to section 212(a)(9)(C)(i)(II) of the Act or section 241(a)(5) of the Act.¹

¹We note that the record does not establish that the Applicant has been issued a Notice of Intent/Decision to Reinstate Prior Order. Consequently, the record does not establish that the Applicant's prior removal order has been reinstated. Nevertheless, as noted above, he is not subject to section 241(a)(5) of the Act because the record does not establish that he entered the United States without authorization after removal, as discussed in detail above.

Matter of R-D-O-

ORDER: The appeal is dismissed.

Cite as *Matter of R-D-O-*, ID# 12144 (AAO Oct. 28, 2015)