



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

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

MATTER OF J-L-G-

DATE: OCT. 28, 2015

APPEAL OF YAKIMA 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 the Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii). The Field Office Director, Yakima Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On February 6, 2015, the Director found the Applicant to be inadmissible under section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. In addition, the Director found the Applicant inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), as a result of the Applicant's unlawful presence in the United States for a period of more than one year and subsequent entry to the United States without being admitted, inspected, or paroled. The Applicant 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 with his lawful permanent resident mother. The Director determined that the Applicant did not meet the requirements for consent to reapply because ten years had not elapsed since the date of the Applicant's last departure. The Applicant's Form I-212 was denied accordingly.

On appeal, the Applicant asserts that he is eligible to apply for consent to reapply for admission. He contends that 8 C.F.R. § 212.2(i)(2) provides for filing a Form I-212 in conjunction with an application for adjustment of status from within the United States. He further maintains that a Form I-212 waiver, if granted, cures inadmissibility for a subsequent entry without inspection to the United States after removal. The Applicant indicates that the Form I-212 approval is retroactive to the date of the foreign national's subsequent entry to the United States after removal, and if more than ten years have passed since reentry, inadmissibility under 212(a)(9)(C)(i)(I) is cured. The Applicant claims that in *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006), and *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007), the foreign national was not eligible to apply for consent to reapply for admission because ten years had not passed since the last departure. 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 establishes that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I). The Applicant entered the United States without being admitted, inspected, or paroled in June 1989, as noted in the Applicant's own statement, dated June 17, 2014. He began to accrue unlawful presence from April 1, 1997, the date the unlawful presence provisions went into effect, until December 2001, when the Applicant left the United States. The Applicant subsequently entered the United States without being admitted in April 2002, and has not left since. The Applicant requires permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act.

Contrary to the Applicant's assertions on appeal, a foreign national who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the foreign national has been outside the United States for more than ten years since the date of his or her last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). *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).¹ Thus, to avoid inadmissibility

¹As noted on the Instructions for Application for Permission to Reapply for Admission Into the United States, at <http://www.uscis.gov/sites/default/files/files/form/i-212instr.pdf>.

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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* U.S. Citizenship and Immigration Services (USCIS) has consented to the Applicant's reapplying for admission. Here, the record establishes that the Applicant is currently residing in the United States and therefore, has not remained outside the United States for 10 years since his last departure. Accordingly, the Applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the Applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the Applicant is statutorily ineligible to apply for consent to reapply at this time.

ORDER: The appeal is dismissed.

Cite as *Matter of J-L-G-*, ID# 13968 (AAO Oct. 28, 2015)

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1. If you are inadmissible under INA section 212(a)(9)(C)(i), you are permanently inadmissible and will always need to request for consent to reapply for admission BEFORE you return to the United States.
 2. You cannot file an application for consent to reapply until you have left the United States and have remained outside the country for at least 10 years since your last departure. After 10 years, you must request consent to reapply before you seek admission to the United States.