



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

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

MATTER OF A-G-M-

DATE: AUG. 2, 2016

APPEAL OF SAN BERNARDINO, CALIFORNIA 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, was found inadmissible for entering the United States without being admitted after having been ordered removed from the United States and seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii). For those inadmissible under this ground and who seek admission after residing abroad for 10 years following their last departure, U.S. Citizenship and Immigration Services (USCIS) may remove the inadmissibility bar by granting permission to reapply in the exercise of discretion.

The Field Office Director, San Bernardino, California, denied the application. The Director concluded the Applicant was inadmissible for having entered the United States without admission after having been previously removed and found him ineligible for permission to reapply because ten years had not elapsed since the date of his last departure in June 2014.

The matter is now before us on appeal. On appeal, the Applicant claims that he is eligible to seek permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act despite not having remained outside the United States for 10 years because he is eligible for adjustment of status under section 245(i) of the Act.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking permission to reapply for admission to the United States and has been found inadmissible for entering the United States without being admitted after having been ordered removed. Section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), provides that any foreign national who has been unlawfully present in the United States for an aggregate period of more than 1 year, or has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible.

Foreign nationals found inadmissible under section 212(a)(9)(C) of the Act may seek permission to reapply for admission under section 212(a)(9)(C)(ii), which provides that inadmissibility shall not apply

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to a foreign national seeking admission more than ten years after the date of last departure from the United States if, prior to the 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 foreign national's reapplying for admission.

Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *See Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *See Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973); *see also Matter of Lee*, *supra*, at 278 (Finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character, and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience").

II. ANALYSIS

The issue on appeal is whether the Applicant qualifies for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act. The Applicant was ordered removed on [REDACTED] 1998, he subsequently reentered the United States without inspection, and the removal order was reinstated and he was again removed on [REDACTED] 2014.¹ The record supports a determination that the Applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act and that he is ineligible for permission to reapply because he has not been outside the United States for ten years since his last departure from the United States.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(9)(C) of the Act for entering the United States without being admitted after having been ordered removed from the United States. Specifically, the Applicant was removed on [REDACTED] 1998, and then reentered the United States without inspection and remained until he was removed on [REDACTED] 2014. The Applicant subsequently reentered the United States without inspection and was removed on [REDACTED] 2015. The Applicant does not contest his inadmissibility on appeal. The record supports a determination that the Applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for entering the United States without admission after having been removed.

¹ After the appeal was filed, the Applicant again reentered the United States without admission, and he was removed pursuant to an expedited removal order on [REDACTED] 2015.

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B. Permission to Reapply

A foreign national who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless they have been outside the United States for more than 10 years since the date of their 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) 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's last departure from the United States occurred on [REDACTED] 2015, less than ten years ago. He is currently statutorily ineligible to apply for permission to reapply for admission.

III. CONCLUSION

The Applicant has the burden of proof in seeking permission to reapply for admission. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. The Applicant is inadmissible for entering without admission after having been removed and must remain outside the United States for a period of ten years before seeking permission to reapply for admission.

ORDER: The appeal is dismissed.

Cite as *Matter of A-G-M-*, ID# 16936 (AAO Aug. 2, 2016)