U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-M-M-

DATE: FEB. 9, 2016

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 Venezuela, 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 Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been ordered removed and subsequently reentering the United States without being admitted; and under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. §1182(a)(9)(A)(i), for having been removed from the United States two times. The Applicant is also inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for a period of one year or more, a ground of inadmissibility that is addressed by the Form I-601, Application for Waiver of Grounds of Inadmissibility, that is the subject of a separate appeal.

The Director denied the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, in a decision dated December 8, 2014, determining that the Applicant did not meet the requirements under the Act because she had not been outside the United States for 10 years since the date of her last departure.

On appeal, the Applicant states that the facts of her case differ from those in the decision denying her Form I-212 and that she had no choice but to enter the United States without inspection after being removed to Mexico, which is not her country of nationality. The Applicant also states that she merits a favorable exercise of discretion.

The record includes, but is not limited to, briefs, statements by the Applicant, documents establishing identity, financial documentation, medical documentation, and affidavits. The entire record was reviewed and considered in rendering this decision.

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

> Certain alien previously removed.-
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> > (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.
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> > (ii) Other aliens.- Any alien not described in clause (i) who-
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> > > (I) has been ordered removed under section 240 or any other provision of law, or
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> > > (II) departed the United States while an order of removal was outstanding, and 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 aliens convicted of an aggravated felony) is inadmissible.
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> > (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 (Secretary)] has consented to the aliens' reapplying for admission.

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

> Aliens unlawfully present after previous immigration violations.-
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> > (i) In general.-Any alien who-
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> > > (I) has been unlawfully present in the United States for an aggregate period of more than l year, or
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> > > (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,
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> 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 reflects that the Applicant initially was admitted to the United States pursuant to a valid B1/B2 visa on May 24, 2001, with permission to remain in the United States until November 23, 2001. The Applicant applied for and obtained an extension of status, which was valid from November 24, 2001, to May 23, 2002. The Applicant's passport, however, is stamped as having entered Venezuela through International Airport on December 20, 2001. The Applicant's extension of status was no longer valid after she departed the United States. The record also includes documentation showing that the Applicant obtained approval of an H1B1 visa on November 15, 2002, with a validity date from May 24, 2002, to April 9, 2005; however, that document was not valid for admission to the United States in H1B status after the Applicant's departure from the United States.

The Applicant's passport is stamped as leaving Venezuela again on November 29, 2003, and entering Venezuela on December 18, 2003. The Applicant, however, states that she left the United States in December 2003 to be with her family for the holidays and to make an appointment at the U.S. Consulate to obtain a new visa based on the H1B1 approval. She does not state that she left the United States in December 2001 and offers no explanation for the documentation in her passport concerning her admission into Venezuela that month.

Another stamp in the Applicant's passport indicates that she submitted an application to the U.S. Consulate in Venezuela, on January 8, 2004. The Applicant states she did not receive a decision on her application from the U.S. Consulate. Her passport is stamped to show a departure from Venezuela on March 16, 2004.

The Applicant was then apprehended by U.S. Customs and Border Protection officers on March 24, 2004, while attempting to enter the United States without inspection near Arizona. The Applicant, in an undated document, "Testimony," submitted with her Form I-290B, Notice of Appeal or Motion, states that she was attempting to enter the United States without inspection in 2004 because she had paid an attorney to assist her in obtaining a visa to work lawfully in the United States and she did not want to jeopardize that opportunity. The Applicant's Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, dated March 27, 2004, and bearing the Applicant's signature, however, states that she did not present her valid passport when apprehended at the border on March 24, 2004, because "[she] gave it to a man that was going to pay [her] to let someone else use it.[1]" The Applicant was voluntarily returned to Mexico. The Applicant

[1] If the Applicant "knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law," she is also inadmissible under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for alien smuggling. We need not address that issue here, as the Applicant is already inadmissible

then applied for admission at the U.S. border from Mexico on March 27, 2004, with her Venezuelan passport and B1/B2 visa, but it was discovered by U.S. inspectors that the Applicant had attempted to enter the United States without inspection three days prior; she again was voluntarily returned to Mexico. The Applicant was also found to be attempting to enter the United States as an intending immigrant, based on her statements that she was returning to work and resume residency in the United States, which are not permitted under her visa's terms.

The Applicant's visa was canceled, and she was ordered removed from the United States as an arriving alien pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record reflects that the Form I-860, Notice of Order of Expedited Removal, dated March 27, 2004, bears the Applicant's signature and fingerprint. The record also indicates that a copy of the document was provided to the Applicant. The document states that the Applicant is inadmissible to the United States. The Applicant also signed and was served a copy of the Form I-296, Notice to Alien Ordered Removed/Departure Verification, which states that the Applicant was prohibited from entering, attempting to enter, or being in the United States for a period of five years from the date of her departure from the United States. The Form I-296 also states that the Applicant must obtain express consent to return to the United States. The Applicant, according to her own testimony, reentered the United States without inspection the next day.

The Applicant states that she had no choice but to return to the United States unlawfully, as she was removed to Mexico, which is not her country of nationality. The Applicant, however, also signed a Statement to be Provided to Arrested or Detained Foreign Nationals, dated March 27, 2004, stating that she was offered the opportunity to speak with her consulate and refused the opportunity. If the Applicant is stating that she returned to the United States without inspection as a result of duress, there is no duress exception to section 212(a)(9)(C)(i)(II).

The record establishes that the Applicant is inadmissible under section 212(a)(9)(C)(i)(II) as a result of her reentry without admission after having been removed under section 235(b)(1) of the Act.[2] An individual who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless he or she has been outside the United States for more than 10 years since the date of the last departure from the United States. The Applicant will need to obtain permission to reapply for admission for a period of 20 years after her departure in accordance with section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), under which she is also inadmissible as a result of having been removed from the United States two times. 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 10 years ago, the Applicant has remained outside the United States since that

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without the opportunity for admission for a period of 10 years since her last departure. It is the Applicant's burden of proof, however, in future proceedings to show that she is not subject to this ground of inadmissibility in light of her sworn statement.

[2] The Director's decision dated December 8, 2014, states that the Applicant is inadmissible as a result of reentering the United States without admission after having been unlawfully present for a year or more. The record is inconclusive at this time as to that ground of inadmissibility, but the record establishes that the Applicant is inadmissible under the other subsection of the same section of the Act, with the same effect.

departure, and U.S. Citizenship and Immigration Services has consented to the Applicant's reapplying for admission pursuant to section 212(a)(9)(A)(iii) of the Act.

The record indicates that the Applicant's last departure from the United States occurred on July 7, 2009, less than 10 years ago. The Applicant is currently statutorily ineligible to apply for permission to reapply for admission. Given her ineligibility to apply for permission to reapply for admission, no purpose would be served in analyzing her evidence of hardship or other discretionary factors.

The Applicant requests that we evaluate her hardship evidence; however, because of her inadmissibility under section 212(a)(9)(C) of the Act, she remains inadmissible and ineligible to request permission to reapply for admission for 10 years from the date of her last departure. Even had the Applicant established extreme hardship to her qualifying relative and provided evidence showing she merits approval in the exercise of discretion, the Applicant is statutorily inadmissible for 10 years after her last departure, and the Director properly denied her Form I-212.

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 M-M-M-,* ID# 12905 (AAO Feb. 9, 2016)