



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

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

MATTER OF L-V-R-R-

DATE: JAN. 5, 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 Guatemala, 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 Service Center Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant is 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. The Applicant was also found to be 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.<sup>1</sup>

The Director determined that the Applicant did not meet the requirements for consent to reapply because she had not been outside the United States for 10 years since the date of her last departure, as required under section 212(a)(9)(C)(ii) of the Act. He denied the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal accordingly.

On appeal, the Applicant asserts that the Director summarily denied her application without evaluating her evidence of hardship. The Applicant also asserts that the Director violated her due process rights because he did not analyze the evidence she submitted and explain why it was insufficient.<sup>2</sup>

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<sup>1</sup> Although the Director's decision cites section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), this appears to be a typographical error, because that statute concerns individuals who were unlawfully present for a year or more and subsequently reentered or attempted to reenter the United States without being admitted. In this case, however, the record shows the Applicant is inadmissible under both section 212(a)(9)(C)(i)(I) and section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), because she accrued over a year of unlawful presence, left the United States after having been ordered removed, and reentered without being admitted.

<sup>2</sup> Constitutional issues are not within our appellate jurisdiction; therefore we will not address this assertion.

The record includes, but is not limited to: a brief; identity and relationship documents; photographs; declarations from the Applicant's spouse, daughter, and acquaintances; school records for the Applicant's daughter; financial records; medical records; and reports on education in California and conditions in Guatemala. The entire record was reviewed and considered in rendering this decision.

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

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.

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(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.

*Matter of L-V-R-R-*

(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 entered the United States without inspection in 1996 and returned to Guatemala in May 1997. She reentered the United States without inspection on October 2, 2001, and U.S. Border Patrol officers apprehended her a few days later. She was placed in removal proceedings and on [REDACTED] 2002, an immigration judge ordered her removed *in absentia*, because the Applicant did not appear for her hearing.<sup>3</sup> The Applicant states that she returned to Guatemala in 2004 and reentered the United States for the last time without inspection in October 2004. In June 2012 she returned to Guatemala. The Applicant accrued unlawful presence in the United States from the date of her unlawful entry in 2001 until her departure in 2004. She also accrued unlawful presence from the date of her reentry in October 2004 and her departure in 2012.

The record establishes that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) as a result of her unlawful presence for an aggregate period of over one year and reentry without admission. She also is inadmissible under section 212(a)(9)(C)(i)(II) as a result of her removal and subsequent reentry to the United States without being admitted. 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. *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). 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 10 years ago, the Applicant has remained outside the United States, and U.S. Citizenship and Immigration Services has consented to the Applicant's reapplying for admission.

The Applicant is subject to the provisions of section 212(a)(9)(A) and 212(a)(9)(C) of the Act. No waiver is available to a foreign national who is subject to section 212(a)(9)(A) and (C) of the Act until 10 years have lapsed since his or her last departure from the United States. The Applicant's last departure from the United States occurred in June 2012, 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. Although the Applicant correctly

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<sup>3</sup> We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The record supports concluding that the Applicant is also inadmissible under section 212(a)(6)(B) for her failure to attend removal proceedings in 2002. Section 212(a)(6)(B) of the Act provides that "[a]ny alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible."

*Matter of L-V-R-R-*

states that the Director did not evaluate her hardship evidence, the denial decision reflects no error in that respect. Because of her inadmissibility under section 212(a)(9)(C) of the Act, the Applicant remains inadmissible and ineligible to request permission to reapply for admission for 10 years after her departure, even had she established extreme hardship to her qualifying relative. As the Applicant is statutorily inadmissible for 10 years after her last departure, 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 L-V-R-R-*, ID# 14226 (AAO Jan. 5, 2016)