



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

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

MATTER OF M-E-N-G-

DATE: JAN. 8, 2016

MOTION ON ADMINISTRATIVE APPEALS 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)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). The Field Office Director, Fresno, California, denied the application. We dismissed an appeal of the Director's decision. The matter is now before us on a motion to reopen and reconsider. The motion will be denied.

The Director found that the Applicant did not meet the requirements for permission to reapply for admission as she is statutorily ineligible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II) and denied the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, accordingly. In a decision, dated February 2, 2015, we concurred with the Director that the Applicant is currently statutorily ineligible to apply for permission to reapply for admission under section 212(a)(9)(C)(i)(II), and dismissed the appeal.¹

On motion, the Applicant contends that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amendments to the Act did not take effect until after April 1, 1997, after her removal from the United States, and therefore she is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act. The Applicant further contends that she is not inadmissible as she did not accrue unlawful presence as contemplated by the Act.

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

¹ On the same date, February 2, 2015, we dismissed the appeal of the decision to deny the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility. However, there is no record that the Applicant has filed a motion to reopen and reconsider the dismissal of the Form I-601.

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The record includes, but is not limited to, the Applicant's brief and previously submitted documents. The entire record was reviewed and considered in arriving at a decision on the motion.

Section 212(a)(9)(C)(i) 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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

On [REDACTED] 1997, the Applicant was ordered excluded and deported after she attempted to procure admission to the United States with a U.S. lawful permanent resident card not belonging to her. The Applicant subsequently entered the United States without inspection on December 2, 1998. We found that the Applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered excluded and deported and reentering the United States without being admitted.

The Applicant asserts that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amendments to the Act did not take effect until after April 1, 1997, and because she was deported on [REDACTED], 1997, prior to the effective date of the IIRIRA amendments, she is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

The Applicant further contends that she does not fall within the purview of section 212(a)(9)(C)(i)(II) of the Act. The Applicant states that since she was not in the United States during the period from [REDACTED] 1997, the date she was deported, to December 2, 1998, the date of her reentry to the United States without inspection, she did not accrue unlawful presence as contemplated by the Act.

Section 212(a)(9)(C)(i)(II) of the Act renders inadmissible those aliens who have been ordered removed under sections 235(b)(1) or 240 of the Act, *or any other provision of law*, and who enter or attempt to reenter the United States without being admitted. Section 212(a)(9)(C)(i)(II) of the Act

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applies to those foreign nationals ordered removed before or after April 1, 1997, and who enter or attempt to reenter the United States unlawfully any time on or after April 1, 1997. The foreign national may have been removed before or after April 1, 1997, but the unlawful reentry or attempted unlawful reentry must have occurred on or after April 1, 1997. *See* Memorandum from Paul Virtue, Acting Executive Associate Commissioner, INS, HQIRT 50/5.12, *Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Immigration and Nationality Act (Act)*. (June 17, 1997).

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 10 years since the date of the alien's 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] 1997, and she returned to the United States on December 2, 1998. The Applicant asserts that she is eligible to seek permission to reapply for admission into the United States. However, the Applicant currently resides in the United States and therefore has not remained outside the United States for 10 years since her last departure. She is currently statutorily ineligible to apply for permission to reapply for admission.

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 motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-E-N-G-*, ID# 14292 (AAO Jan. 8, 2016)