



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

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

MATTER OF D-G-S-

DATE: JAN. 13, 2016

APPEAL OF HARLINGEN, TEXAS 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, 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 Field Office Director, Harlingen, Texas, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record establishes that the Applicant was ordered removed by an Immigration Judge on [REDACTED] 1997, and was removed to Mexico on or about [REDACTED] 1997. The record indicates that the Applicant made multiple subsequent entries into the United States without being admitted, between 1998 and 2013, and was consequently removed to Mexico. Most recently, on or about March 1, 2013, the Applicant reentered the United States without admission, and on October 1, 2013, the Applicant was issued the Form I-871, Notice of Intent/Decision to Reinstate Prior Order. On [REDACTED] 2013, the Applicant was removed to Mexico. The Field Office Director determined that the Applicant was subject to mandatory reinstatement of a prior removal order pursuant to section 241(a)(5) of the Act and thus, the Applicant was not eligible to receive any relief or benefits under the Act. The Form I-212 was denied accordingly.

On appeal, the Applicant submits a brief arguing that the original removal order and, consequently, the subsequent reinstatements of that order were entered improperly, and therefore he is neither inadmissible nor barred from seeking permission to reapply for admission. Appellate jurisdiction over the decisions of immigration judges in removal proceedings does not lie with this office, but rather lies with the Board of Immigration Appeals. *See* 8 C.F.R. § 1003.1(b). Motions to reopen or reconsider a decision of an immigration judge must be filed with the immigration court having administrative control over the record of proceedings. *See* 8 C.F.R. § 1003.23(b). Accordingly, we do not have jurisdiction to review the Applicant's removal order.

Section 212(a)(9)(A) of the Act provides:

Certain alien 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 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.

- (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
 - (II) 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.

- (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] has consented to the aliens' reapplying for admission.

Section 241(a)(5) of the Act provides in pertinent part:

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

The regulation at 8 C.F.R. § 241.8 states that:

(a) [A]n alien who illegally reenters the United States after having been removed, or having departed voluntarily, while under an order of exclusion, deportation, or removal shall be removed from the United States by reinstating the prior order. The alien has no right to a hearing before an immigration judge in such circumstances. In

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establishing whether an alien is subject to this section, the immigration officer shall determine the following:

- (1) Whether the alien has been subject to a prior order of removal. . . .
- (2) The identity of the alien. . . .
- (3) Whether the alien unlawfully reentered the United States

(b) [I]f an officer determines that an alien is subject to removal under this section, he or she shall provide the alien with written notice of his or her determination. The officer shall advise the alien that he or she may make a written or oral statement contesting the determination. If the alien wishes to make such a statement, the officer shall allow the alien to do so and shall consider whether the alien's statement warrants reconsideration of the determination.

(c) Order. If the requirements of paragraph (a) of this section are met, the alien shall be removed under the previous order of exclusion, deportation, or removal in accordance with section 241(a)(5) of the Act.

As stated above, the Applicant was last issued the Form I-871 on October 1, 2013, as required by 8 C.F.R 241.8(b).¹ The Applicant was removed from the United States pursuant to that order on [REDACTED] 2013, and thus, the reinstatement order was executed. Consequently, the Applicant is not barred under section 241(a)(5) of the Act from applying for relief under the Act at this time.

Despite our finding that the Applicant is not barred under section 241(a)(5) of the Act from applying for relief under the Act, the record establishes that the Applicant remains inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having re-entered the United States without admission after being ordered removed.²

Section 212(a)(9)(C) of the Act provides:

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,

¹ U.S. Immigration and Customs Enforcement (ICE) is the agency responsible for issuance of the Form I-871.

² This office conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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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 of Homeland Security has consented to the alien's reapplying for admission.

The record establishes that the Applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act as a result of being ordered removed on [REDACTED] 1997 and subsequently reentering the United States without authorization on multiple occasions as noted above. An individual who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the individual has been outside the United States for more than ten years since the date of 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 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 record indicates that the Applicant's last departure from the United States occurred on [REDACTED] 2013, less than ten years ago. The Applicant is currently statutorily ineligible to apply for permission to reapply for admission.

The Applicant has the burden of proving eligibility for the benefit sought. See section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of D-G-S-*, ID# 15364 (AAO Jan. 13, 2016)