



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

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

MATTER OF C-L-D-G-

DATE: JUNE 20, 2016

CERTIFICATION OF FRESNO, 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 on this ground, who seek admission after residing abroad for 10 years following their last departure, USCIS may remove the inadmissibility bar by granting permission to reapply in the exercise of discretion.¹

The USCIS Director, Fresno, California Field Office, denied the application, finding the Applicant ineligible for consent to reapply for admission into the United States after deportation or removal because she had not remained outside of the United States for 10 years before filing her application. The Applicant filed her appeal late, and the Director, considering the late-filed appeal a motion to reopen and reconsider, also found the motion to be untimely filed. We remanded the matter to the Director for a determination on the motion's merits.² After denying the motion on the merits, the Director certified the decision to us. We then requested from the Applicant additional evidence, to permit her to supplement the record on certification. The Applicant did not respond to our notice. We will affirm the Director's initial decision, and the application is denied.

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 from the United States. Section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), provides that any foreign national who has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible.

¹ The Applicant was also found inadmissible for having been previously ordered removed and seeks permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

² 8 C.F.R. § 103.3(a)(2)(v)(2).

(b)(6)

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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 to a foreign national seeking admission more than 10 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.

II. ANALYSIS

The Applicant raises several issues on appeal. She asserts that she was not ordered removed but was only apprehended at the border and returned to Mexico. Alternatively, she asserts that her expedited removal order was invalid because it was issued in violation of her constitutional rights. The record establishes that the Applicant was ordered removed in 1998 and departed pursuant to that order. Although she asserts that her removal order was invalid because her constitutional rights were violated, constitutional issues are not within our appellate jurisdiction; therefore this assertion will not be addressed in our decision.

Another issue is whether the Director correctly determined that the evidence did not warrant reopening or reconsidering the Form I-212 denial decision. The Applicant does not address this issue on certification. We affirm the Director's determination that the evidence does not warrant reopening or reconsideration, because the Applicant has not shown that she was outside of the United States for more than 10 years before submitting her Form I-212, as required by section 212(a)(9)(C)(ii) of the Act. Finally, though not addressed by the Director in her most recent decision, the record shows that the Applicant is also inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).³

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, she was removed in February 1998, and she subsequently reentered without inspection that month. The record includes evidence showing that she also was removed from the United States in June 2011, pursuant to a reinstated removal order.

The Applicant contests the inadmissibility finding and asserts that she was not ordered removed from the United States in 1998, because she was merely apprehended at the border and returned to Mexico. The record contains a Form I-860, Notice and Order of Expedited Removal, with a

³ The Applicant's expedited-removal order shows that she was removed after she applied for admission into the United States in 1998 by presenting a photo-altered Mexican passport with a U.S. visa at the [REDACTED] California, port of entry, thus misrepresenting her true identity. For a waiver of this ground of inadmissibility, the Applicant will need to file a Form I-601, Application for Waiver of Grounds of Inadmissibility.

certificate of service dated February 1998. Moreover, in 2011, the Applicant received a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, which she acknowledged. On that form she indicated she did not wish to make a statement contesting the determination. The record therefore establishes that the Applicant departed the United States in 1998 pursuant to an order of removal and that this order was reinstated in 2011.

B. Eligibility to Reapply

The Applicant has been found inadmissible under section 212(a)(9)(C)(i)(II) of the Act for entering the United States without being admitted after having been ordered removed from the United States. Specifically, she was expeditiously removed on February 2, 1998, pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). She subsequently reentered without inspection in February 1998. According to evidence in the record, she also was removed from the United States in June 2011, pursuant to a reinstated removal order.

An individual who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless the individual has been outside the United States for more than ten years since the date of the individual's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *see also 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)(i) of the Act, the Board has held that 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.⁴

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. She has not established that she has remained outside of the United States for 10 years since her last departure and is eligible to request permission to reenter the United States after removal.

ORDER: The initial decision of the Director, Fresno, California Field Office, dated January 14, 2016, is affirmed and the application is denied.

Cite as *Matter of C-L-D-G-*, ID# 17569 (AAO June 20, 2016)

⁴ The record includes evidence showing that USCIS sent the Applicant a settlement notice in 2014, because her case history reflects that she may have been eligible to request consent to reapply for admission from within the United States, if she met the requirements of the settlement agreement in *Duran-Gonzalez v. DHS*, No. C06-1411 (W.D. Wash., 2014). The record, however, does not show that the Applicant currently resides in the United States or that she responded to the settlement notice after it was mailed to her.