



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

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

MATTER OF R-R-P-

DATE: MAY 31, 2016

APPEAL OF SAN FERNANDO, 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, U.S. Citizenship and Immigration Services (USCIS) may remove the inadmissibility bar by granting permission to reapply in the exercise of discretion.

The USCIS Director, San Fernando, California Field Office, denied the application. The Director concluded that because the Applicant was in the United States and inadmissible under section 212(a)(9)(C)(i)(II) of the Act, he was ineligible for permission to reenter and denied the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, accordingly. We issued a request for additional evidence, to which the Applicant responded.

The matter is now before us on appeal. In the appeal, the Applicant asserts he is eligible for permission to reapply for admission because of his reliance on *Perez-Gonzales v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). The Applicant submits additional evidence.

Upon *de novo* review, we will sustain the appeal.

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) of the Act, 8 U.S.C. § 1182(a)(9)(C), provides, in pertinent part:

Aliens Unlawfully Present After Previous Immigration Violations.-

(i) In General

Any alien who-

...
(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.

Individuals 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). Section 212(a)(9)(C)(ii) of the Act provides, in pertinent part:

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.

Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *See Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation, the recency of deportation, length of residence in the United States, the applicant's moral character, the applicant's respect for law and order, evidence of the applicant's reformation and rehabilitation, family responsibilities, any inadmissibility under other sections of law, hardship involved to the applicant or others, and the need for the applicant's services in the United States. *See Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973); *see also Matter of Lee, supra*, at 278 (finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience").

II. ANALYSIS

The first issue to be addressed is whether the Applicant is eligible to apply for permission to reenter the United States after having been previously ordered removed. The Applicant asserts that he is eligible for permission to reapply for admission because of his reliance on *Perez-Gonzales v.*

Ashcroft, 379 F.3d 783 (9th Cir. 2004). He does not contest the finding of inadmissibility pursuant to section 212(a)(9)(C)(i)(II) of the Act, a determination supported by the record. The second issue to be addressed is whether approval of the application for permission to reenter is warranted as a matter of discretion.

The evidence in the record establishes that the Applicant is eligible for permission to reapply for admission due to his reliance on the *Perez-Gonzales* case. Furthermore, approval is warranted as a matter of discretion because the favorable factors outweigh the unfavorable factors in this case.

A. Eligibility to Reapply

As stated above, 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, he was expeditiously removed on March 28, 1999, pursuant to section 235(b)(1) of the Act. He subsequently reentered without inspection around April 1999.

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.

Individuals who reside within the jurisdiction of the Ninth Circuit Court of Appeals, however, may be eligible for consent to reapply for admission even if they are presently inadmissible under section 212(a)(9)(C)(i)(II) of the Act, if they meet specific requirements. The Applicant resides within the jurisdiction of the Ninth Circuit Court of Appeals.

According to the terms of the *Duran Gonzales v. DHS* settlement agreement, a class member is any person who:

1. Is the beneficiary or derivative beneficiary of an immigrant visa petition or labor certification filed on or before April 30, 2001, provided that, if the immigrant visa petition or labor certification was filed after January 14, 1998:
 - a. the beneficiary was physically present in the United States on December 21, 2000, or
 - b. If a derivative beneficiary, the derivative beneficiary or the primary beneficiary was physically present in the United States on December 21, 2000.

2. Is inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act, because he or she entered or attempted to reenter the United States without being admitted after April 1, 1997, and without permission after having previously been removed;
3. Properly filed a Form I-485, Application to Register Permanent Residence or Adjust Status, and Form I-485 Supplement A (Adjustment of Status Under Section 245(i)) while residing within the jurisdiction of the Ninth Circuit on or after August 13, 2004, and on or before November 30, 2007;
4. Filed a Form I-212 on or after August 13, 2004, and on or before November 30, 2007;
5. Has had Forms I-485, I-485 Supplement A, and I-212 denied by U.S. Citizenship and Immigration Services ("USCIS") or the Executive Office for Immigration Review ("EOIR") on or after August 13, 2004, or they have not yet been adjudicated;
6. Is not currently subject to pending removal proceedings under INA § 240, or before the United States Court of Appeals for the Ninth Circuit on a petition for review of a removal order resulting from proceedings under INA § 240; and
7. Did not enter or attempt to reenter the United States without being admitted after November 30, 2007.

Settlement Agreement and Amendment of the Class Definition at 2-3, *Duran Gonzales v. DHS*, No. C06-1411 (W.D. Wash, 2014).

The record reflects that the Applicant had a labor certification filed on his behalf before April 30, 2001.¹ He entered the United States without being admitted after April 1, 1997, and without permission after having previously been removed. The Applicant has shown that he filed a Form I-485 and Form I-485 Supplement A while residing within the jurisdiction of the Ninth Circuit on or after August 13, 2004, and on or before November 30, 2007.² The record indicates that he filed a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, on or after August 13, 2004, and on or before November 30, 2007.³ The record reflects that the Applicant's Forms I-485 and I-212 were denied on July 29, 2009, after the August 13, 2004, deadline. The Applicant is not currently in removal proceedings and does not have a petition for review of a removal order pending before the Ninth Circuit Court of Appeals. The record does not indicate that the Applicant entered or attempted to enter the United States without being admitted after November 30, 2007.

¹ The Applicant's labor certification was filed on April 6, 2001.

² He filed Forms I-485 and I-485 Supplement A on January 5, 2005, while residing in California.

³ He filed a Form I-212 on May 20, 2005.

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As the Applicant meets all the requirements necessary to establish he is a class member under the terms of the settlement agreement, the Applicant is eligible for benefits under the settlement agreement. Consequently, the Applicant has shown that he is eligible for permission to reapply for admission into the United States after deportation or removal pursuant to section 212 (a)(9)(C)(ii) of the Act.

B. Permission to Reapply

As stated above, we must weigh any unfavorable factors against the favorable factors to determine if approval of the application is warranted as a matter of discretion.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

The favorable factors in this matter are the Applicant's apparent lack of a criminal record, his family ties, his gainful employment, his payment of taxes, and support letters from the Applicant's friends and family in the United States. The unfavorable factors are the Applicant's attempt to procure entry to the United States by fraud or willful misrepresentation, and the Applicant's illegal reentry into the United States after removal. The record establishes that the favorable factors in the application outweigh the unfavorable factors. Therefore, a favorable exercise of discretion is warranted.

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 met that burden. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of R-R-P-*, ID# 15219 (AAO May 31, 2016)