



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

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

MATTER OF A-M-

DATE: SEPT. 16, 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, 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). Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion for those who seek admission after residing abroad for 10 years following their last departure.

The Director, Oakland Park Field Office, denied the application. The Director determined that the Applicant did not meet the requirements for permission to reapply for admission because he had not been outside of the United States for 10 years since the date of his last departure, as required under section 212(a)(9)(C)(ii) of the Act. The Director also determined that the Applicant was inadmissible under 212(a)(6)(C)(ii)(I) of the Act for falsely claiming to be a U.S. citizen and noted that there was no provision under the Act that provided for a waiver of section 212(a)(6)(C)(ii)(I) and thus, the granting of permission to reapply for admission would serve no purpose. This office dismissed a subsequent appeal based on the same grounds detailed by the Director in his decision to deny the application.

The matter is now before us on motion to reconsider. In the motion, the Applicant again maintains that he has met the requirements under section 212(a)(9)(C)(ii) of the Act because more than 10 years have passed since his removal. The Applicant also maintains that the record does not establish that his prior removal order was reinstated. The Applicant further asserts that he did not make a false claim of US citizenship because he was never admitted to the United States and therefore his misrepresentation was not material as it did not affect any decisions made by USCIS. The Applicant has not submitted any new evidence with the motion brief.

Upon review, the motion to reconsider will be denied.

I. LAW

(b)(6)

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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 that any foreign national who has been unlawfully present in the United States for an aggregate period of more than 1 year, or has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible.

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 ten 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.

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

A. Permission 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, the record reflects that on [REDACTED] 1997, the Applicant attempted to enter the United States by claiming to be a U.S. citizen. Upon inspection, the Applicant was placed into expedited removal proceedings. In a sworn statement dated [REDACTED] 1997, the Applicant stated that he was a citizen of Mexico and that he made a false claim of U.S. citizenship in order to enter the United States and reunite with his father. The Applicant was removed on [REDACTED] 1997. In February 2001, the Applicant entered the United States without inspection and has remained in the United States. The Applicant is thus inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act, for having been ordered removed and subsequently reentering the United States without being admitted.

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An individual who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for permission 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 of Immigration Appeals (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 granted the Applicant permission to reapply for admission into the United States.

On motion, the Applicant again maintains that it has been 10 years since his last departure from the United States and the issue of where those 10 years were spent is inconsequential. In *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006), the Board of Immigration Appeals (BIA) found that individuals subject to section 212(a)(9)(C) are ineligible for permission to reapply for admission under 8 C.F.R. §212.2 because, "as a result of having illegally reentered after previously being formally removed, [they] are by default inadmissible for life [and their] disability may be waived only after the alien has been outside the United States for ten years." (emphasis added) (quoting *Berrum-Garcia v. Comfort*, 390 F.3d 1158 (10th Cir. 2004)). The instructions to the Form I-212 also state that a foreign national that is inadmissible under section 212(a)(9)(C) of the Act cannot file an application for permission to reapply until the foreign national has left the United States and has remained outside the country for at least 10 years since the last departure. The instructions to the Form I-212 may be found at: <https://www.uscis.gov/sites/default/files/files/form/i-212instr.pdf>

The Applicant further contends that there are *nunc pro tunc* provisions at 8 C.F.R. § 212.2(i)(2) that allow for the Applicant to apply for permission to reapply once 10 years have elapsed since the Applicant's departure from the United States. However, the Board determined in *Matter of Torres-Garcia, supra*, that 8 C.F.R. § 212.2 does not govern the implementation of section 212(a)(9)(C) of the Act and that an individual may not obtain permission to reapply under section 212(a)(9)(C)(ii) without first remaining outside the United States for 10 years.

In the present matter, the Applicant is currently residing in the United States and therefore, has not remained outside the United States for 10 years since his last departure. The Applicant is currently statutorily ineligible to apply for permission to reapply for admission.

B. Additional Grounds Barring Relief

Matter of Martinez-Torres, held that an application for permission to reapply for admission is denied, in the exercise of discretion, to a foreign national who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. 10 I&N Dec. 776 (Reg'l Comm'r 1964). The record establishes that the Applicant is inadmissible under a ground for which no waiver is available and is currently not eligible to receive any relief or benefits under the Act, as further detailed below.

1. False Claim to U.S. Citizenship

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Section 212(a)(6)(C)(ii) of the Act renders inadmissible any foreign national who falsely represents himself to be a citizen of the United States for any purpose or benefit under the Act or any other Federal or State law. On motion, the Applicant has not provided any legal basis for his claim that he did not make a false claim of US citizenship because he was never admitted to the United States and therefore his misrepresentation was not material as it did not affect any decisions made by USCIS.

The Act makes clear that a foreign national seeking admission must establish admissibility “clearly and beyond doubt.” See section 235(b)(2)(A) of the Act; see also section 240(c)(2)(A) of the Act. The same is true for demonstrating admissibility in the context of an application for adjustment of status. See generally *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008); *Rodriguez v. Mukasey*, 519 F.3d at 776; *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). In this case, the evidence in the record establishes that the Applicant misrepresented citizenship to attempt to procure entry to the United States. He is thus permanently inadmissible to the United States for making a false claim to U.S. citizenship. There is no waiver available for inadmissibility under section 212(a)(6)(C)(ii) of the Act.

2. Reinstatement of Prior Removal Order

As detailed in our decision to dismiss the appeal, the record reflects that on [REDACTED] 2012, a Form I 871, Notice of Intent/Decision to Reinstate Prior Order, was issued to the Applicant, as required by 8 C.F.R 241.8(b), and his prior removal order was thus reinstated.

Section 241(a)(5) of the Act provides that if a foreign national has reentered the United States illegally after having been removed pursuant a removal order, the prior removal order is reinstated from its original date and the foreign national is not eligible to apply for any relief under the Act. The record does not indicate that the Applicant has been removed from the United States pursuant to that order and thus, the reinstatement order has not been executed. The Applicant is thus not eligible to receive any relief or benefits under the Act at this time.

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.

ORDER: The motion to reconsider is denied.

Cite as *Matter of A-M-*, ID# 17842 (AAO Sept. 16, 2016)