U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-V-C-

DATE: APR. 19, 2018

APPEAL OF DENVER, COLORADO FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY

The Applicant, a native and citizen of Mexico currently residing in the United States, has applied to adjust status to that of a lawful permanent resident. A foreign national seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for unlawful presence and seeks a waiver of that inadmissibility. Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Denver, Colorado Field Office denied the application, concluding that the Applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act for accruing unlawful presence in the United States of more than 1 year and seeking admission within 10 years of his last departure. The Director then determined that the Applicant had not established, as required, that denial of admission would result in extreme hardship to his U.S. citizen spouse, the only qualifying relative.

On appeal, the Applicant submits additional evidence and asserts that the Director erred because he is no longer inadmissible now that the 10-year period during which he was barred from admission has expired.

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

I. LAW

A foreign national who has been unlawfully present in the United States for 1 year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i) of the Act. A foreign national is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act.

This inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent. Section 212(a)(9)(B)(v) of the Act.

II. ANALYSIS

The issues on appeal are whether the Applicant remains inadmissible for unlawful presence, and if so, whether he has established extreme hardship to a qualifying relative. In support of the waiver application, the Applicant submitted an affidavit from his spouse and letters of support from family and friends; medical documentation for his spouse; financial documents; and civil documents. With the appeal, the Applicant submits a brief and copies of opinion letters from the USCIS Office of Chief Counsel, an unrelated decision from our office, an unpublished decision from the Board of Immigration Appeals (Board), and a practice advisory from the American Immigration Lawyers Association (AILA Infonet) that also mentioned the USCIS Office of Chief Counsel opinion letters.

The entire record was reviewed and considered in rendering this decision. We find that the Applicant remains inadmissible despite the passage of time and that the Applicant has not overcome the Director's extreme hardship determination.

The Director found the Applicant to be inadmissible for having been unlawfully present in the United States for more than 1 year, specifically because he entered the United States as a B-2 nonimmigrant visitor using a Border Crossing Card (BCC) in September 2003 with an authorized period of stay until December 2003, but remained in the United States until 2005. The Director determined that the Applicant thus accrued unlawful presence from 2003 until he departed.[1] The record also reflects that the Applicant made subsequent entries into the United States as a B-2 visitor using his BCC, the most recent of which was in March 2007 for which the Applicant contends he was authorized to stay until September 2007.

On appeal, the Applicant does not contest the finding that he accrued unlawful presence of more than 1 year prior to his departure in 2005. He contends, however, that as he triggered the 10-year bar to admission when he departed the United States in 2005 and his subsequent entries were lawful because he used a valid BCC each time, the 10-year bar to admission has now expired and a waiver of inadmissibility is no longer necessary.

To support his assertion, the Applicant refers to opinion letters from 2006 and 2009 from the USCIS Office of Chief Counsel, as well as the AILA Infonet document, and contends that this evidence shows that the period of inadmissibility under section 212(a)(9)(B) of the Act continues to run after a foreign national is paroled in or lawfully admitted as a nonimmigrant to the United States. A review of this evidence, however, reveals that it does not support the Applicant's claims.

[1] Entry into the United States as a B-2 visitor using a BCC is valid for a 30-day period of stay with limited geographic proximity to the border with Mexico. 8 CFR 235.1(h)(1)(iii); www.cbp.gov.

According to the letters, which are referenced in the AILA Infonet document, the phrase "lawfully admitted as a nonimmigrant" is qualified by the phrase "under section 212(d)(3) [of the Act]." Thus, it is not any lawful admission as a nonimmigrant that allows the period of inadmissibility to run but only one which is authorized through a nonimmigrant waiver application approved under section 212(d)(3) of the Act prior to the foreign national's entry. There is no evidence that prior to the Applicant's entries into the United States after his 2005 departure he had filed for or obtained a section 212(d)(3) waiver. Accordingly, the Applicant's entries subsequent to 2005 were not lawful admissions as a nonimmigrant under section 212(d)(3) of the Act, and the 10-year period of the Applicant's inadmissibility did not continue to run.

The Applicant also cites a Board decision, *Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006), to support his contention that the inadmissibility period continues to run if an individual is lawfully admitted into the United States after being unlawfully present for one year or more. *Rodarte*, however, does not address this precise issue, but rather states that "a [foreign national's] departure from the United States triggers the 10-year inadmissibility period specified in section 212(a)(9)(B)(i)(II) only if that departure was preceded by a period of unlawful presence of at least 1 year." *Id.* at 909. Here, the Applicant does not contest that his departure from the United States in 2005 was preceded by a period of unlawful presence of more than one year.

Finally, the Applicant refers to one of our non-precedent decisions as well as an unpublished Board decision. Neither decision was published as a precedent and therefore does not bind USCIS officers in future adjudications. 8 C.F.R. §§ 103.3(c),1003.1(g).

We find that the Applicant has not demonstrated that he may serve the unlawful presence bar period while in the United States because his entries using his BBC subsequent to his 2005 departure were not preceded by a section 212(d)(3) waiver. Accordingly, the Applicant remains inadmissible under section 212(a)(9)(B) of the Act and requires a waiver of this inadmissibility.

As noted earlier in this decision, there is a waiver available to the Applicant under section 212(i) of the Act for his inadmissibility for which the Director found the Applicant was ineligible because the Applicant did not show the resulting extreme hardship to his qualifying relative upon his refusal of admission. On appeal, the Applicant does not address the Director's extreme hardship finding at all, focusing instead on his arguments about no longer being inadmissible due to the passage of time. As the Applicant has not presented any arguments in rebuttal to the Director's extreme hardship analysis, we will affirm the Director's findings. Consequently, the waiver application remains denied.

ORDER: The appeal is dismissed.

Cite as *Matter of F-V-C-*, ID# 1116374 (AAO Apr. 19, 2018)