



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

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

MATTER OF L-M-T-

DATE: DEC. 4, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for remaining in the country unlawfully for one year or more and seeking admission within 10 years of his departure from the United States. The Applicant was also found to be inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for accruing over one year of unlawful presence in the United States and reentering the United States without being admitted.

In a decision dated March 6, 2015, the Director denied the Applicant's Form I-601 as a matter of discretion, on the basis that the Applicant was inadmissible under section 212(a)(9)(C)(i)(I) of the Act. The Director found the Applicant ineligible to request consent to reapply for readmission under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii), because he has not remained outside of the United States for at least ten consecutive years after his last departure from the United States.

On appeal, the Applicant asserts that he is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act. To support this assertion, the Applicant refers to the exception for minors contained in section 212(a)(9)(B)(iii) of the Act, which states that time spent in the United States while under the age of 18 is not counted towards an individual's period of unlawful presence. The Applicant asserts that the exception applies to inadmissibility determinations under section 212(a)(9)(C) of the Act as well as to determinations under section 212(a)(9)(B) of the Act. He concludes that the period of time that he was unlawfully present in the United States while he was a minor therefore does not render him inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

The record includes, but is not limited to, statements about hardship from the Applicant and his spouse; medical and financial evidence; letters from family and friends; country conditions information; and identity and relationship documentation. The entire record was reviewed and considered in rendering this decision.

Matter of L-M-T-

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien . . . who-

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

.....

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

.....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the Applicant entered the United States without inspection in January 2007, when he was [redacted]-years-old, and that he returned to Mexico in April 2010, when he was [redacted]-years-old. The record reflects further that the Applicant attempted to reenter the United States without inspection in April 2010, and he was given "voluntary return." The Applicant reentered the United States without inspection in May 2010, and he remained in the country until on or around July 30, 2013, when he departed to Mexico.

Pursuant to section 212(a)(9)(B)(iii)(I) of the Act, the unlawful status that occurred before the Applicant's 18th birthday is not counted as unlawful presence for purposes of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. Because the Applicant was under the age of [redacted] between January 2007 and July 5, 2010, his presence in the United States during any period of that time is not counted as unlawful presence. However, the period of time that the Applicant was present in the United States between [redacted] 2010 and on or around July 30, 2013 counts as unlawful presence for purposes of section 212(a)(9)(B)(i)(II) of the Act, as he turned 18-years-old on [redacted] 2010. Because the Applicant

Matter of L-M-T-

accrued unlawful presence for one year or more between [REDACTED] 2010 and his departure to Mexico on or around July 30, 2013, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The Applicant does not contest that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(C) of the Act states in pertinent part:

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, 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 has consented to the alien's reapplying for admission.

The Applicant asserts that the exception for unlawful presence accrued as a minor as set forth in 212(a)(9)(B)(iii) of the Act also applies to unlawful presence provisions set forth in section 212(a)(9)(C)(i)(I) of the Act. However, we note that the plain language of the exception contained in section 212(a)(9)(B)(iii) refers only to unlawful presence as set forth in section 212(a)(9)(B)(i) of the Act. It does not apply to grounds of inadmissibility under section 212(a)(9)(C) of the Act. Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate, Pearl Chang, Acting Chief, Office of Policy and Strategy, USCIS, HQDOMO 70/21.1, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Section 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act, Revision to and Re-designation of Adjudicator's Field Manual (AFM) Chapter 30.1(d) as Chapter 40.9 (AFM Update AD 08-03) 28* (May 6, 2009), http://connect.uscis.dhs.gov/workingresources/immigrationpolicy/Documents/revision_redesign_AF_M.pdf. Accordingly, the Applicant has not overcome the finding that the period of time that he was in the United States while he was a minor (between January 2007 and his departure from the country in April 2010) counts as unlawful presence for inadmissibility purposes under section 212(a)(9)(C)(i)(I) of the Act. Therefore, the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act as he was unlawfully present in the United States for an aggregate period of more than 1 year and he attempted to enter the United States without being admitted in April 2010.

Matter of L-M-T-

An individual who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). 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 10 years ago, the Applicant has remained outside the United States, and U.S. Citizenship and Immigration Services has consented to the Applicant's reapplying for admission.

Here, the Applicant's last departure from the United States occurred on or around July 30, 2013, less than 10 years ago. Although the Applicant currently resides in Mexico, he has not remained outside the United States for 10 years since his last departure. The Applicant is thus currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating his waiver application under section 212(a)(9)(B)(v) of the Act. The appeal of the denial of the waiver application is dismissed as a matter of discretion, as its approval would not result in the Applicant's admissibility to the United States.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of L-M-T-*, ID# 14581 (AAO Dec. 4, 2015)