



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

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

MATTER OF J-D-J-H-G-

DATE: OCT. 23, 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 the Dominican Republic, 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.

On January 23, 2015, the Director determined that the Applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. In addition, the Director found the Applicant inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), as a foreign national previously removed who seeks admission within five years of the date of removal, and section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), as a result of the Applicant's removal and subsequent entry to the United States without being admitted, inspected, or paroled. The Director denied the Applicant's application for a waiver under section 212(a)(9)(B)(v) as a matter of discretion on the basis that the Applicant was inadmissible under section 212(a)(9)(C) and did not meet the requirements for consent to reapply for admission.

On appeal, the Applicant asserts that he was not provided notice of the immigration consequences of removal. The Applicant indicates that his wife's health has suffered as a result of separation and that she would experience extreme hardship if separated from him for ten years. In support, the Applicant provided medical records, a document about dysthymic disorder, copies of pages from his wife's passport, travel documents, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (A) Certain aliens previously removed.-
  - (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the

date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

. . . . .

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

(B) Aliens Unlawfully Present

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) 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.

. . . . .

(C) 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 record establishes that the Applicant is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(A)(i) of the Act. The record reflects that in December 2000, the Applicant entered the United States without being admitted, inspected, or paroled. On January 19, 2001, he was ordered removed from the United States. The Applicant was removed from the United States on January 24, 2001. He subsequently entered the United States without being admitted, inspected, or paroled on or around November 25, 2005. The Applicant voluntarily returned to the Dominican Republic on or around July 19, 2011, less than five years ago. The Applicant is thus inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and section 212(a)(9)(A)(i) of the Act as a foreign national previously removed who seeks admission within five years of the date of removal.

The record further establishes that the Applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act as a result of the Applicant's removal and subsequent entry to the United States without being admitted, inspected, or paroled, as noted by the Director, and under section 212(a)(9)(C)(i)(I) of the Act, for entering the United States without being admitted, inspected, paroled, after having accrued unlawful presence of more than one year. A foreign national who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the foreign national has been outside the United States for more than ten years since the date of the foreign national's last departure from the United States. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *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) of the Act, 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 U.S. Citizenship and Immigration Services has consented to the Applicant's reapplying for admission. Here, the Applicant last departed the United States on or around July 19, 2011, less than ten years ago. The Applicant is currently statutorily ineligible to apply for permission to reapply for admission. 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 proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met that burden. Accordingly, the appeal is dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of J-D-J-H-G-*, ID# 13720 (AAO Oct. 23, 2015)