



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

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

MATTER OF J-L-G-

DATE: OCT. 28, 2015

APPEAL OF YAKIMA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of the 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 Field Office Director, Yakima Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On February 6, 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)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), as a result of the Applicant's unlawful presence in the United States for a period of more than one year 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) of the Act as a matter of discretion because the Applicant was inadmissible under section 212(a)(9)(C) of the Act and did not meet the requirements for consent to reapply.

On appeal, the Applicant claims that we previously determined that the bar to admission under section 212(a)(9)(B) of the Act could be met through time spent outside or inside the United States. He further claims that the Board of Immigration Appeals also made the same determination. In support, the Applicant submits a Board decision. 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:

(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 entered the United States without being admitted, inspected, or paroled in June 1989, as noted in the Applicant's own statement, dated June 17, 2014. He began to accrue unlawful presence from April 1, 1997, the date the unlawful presence provisions went into effect, until December 2001, when the Applicant left the United States. 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.

With respect to the Applicant's assertions that we previously determined that the bar to admission under section 212(a)(9)(B) could be met through time spent outside or inside the United States, we note that although 8 C.F.R. § 103.3(c) states that precedent decisions of U.S. Citizenship and Immigration Services (USCIS) are binding on all its employees in the administration of the Act, non-precedent decisions are not similarly binding. Furthermore, our non-precedent decision and the Board decision submitted by the Applicant in support involve only inadmissibility under section 212(a)(9)(B) of the Act. In the Applicant's case, the Director found, and we concur based on a review of the record, that the Applicant is also inadmissible under section 212(a)(9)(C) of the Act, as a result of the Applicant's unlawful presence in the United States for a period of more than one year and subsequent entry to the United States without being admitted, inspected, or paroled.

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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 record establishes that 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. Accordingly, 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-L-G-*, ID# 13967 (AAO Oct. 28, 2015)