U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-R-M-

DATE: APR. 1, 2016

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 for unlawful presence. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. 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, Nebraska Service Center, denied the application. The Applicant was found inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for having accrued more than one year of unlawful presence and re-entering the United States without inspection. The Director concluded that the Applicant had not resided outside the United States for the ten-year period required before applying for permission to reapply for admission to the United States and denied the waiver application as a matter of discretion.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in denying his waiver application as a matter of discretion solely based on his inadmissibility under section 212(a)(9)(C)(i) of the Act and claims that the record establishes extreme hardship to a qualifying relative, the Applicant's spouse.

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

I. LAW

The applicant is seeking admission as an immigrant and has been found inadmissible for unlawful presence, specifically having been unlawfully present in the United States from 1999 or 2000 until 2005 and from May 2008 until February 2015. Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent parts:

> (i) In General
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> Any alien (other than an alien lawfully admitted for permanent residence) who—
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> . . . .
>
> (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.
>
> (ii) Construction of Unlawful Presence
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> For purposes of this paragraph an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion for

> 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 . . . 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 Applicant was also found inadmissible for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year. Section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), provides, in pertinent part:

> Aliens Unlawfully Present After Previous Immigration Violations.-
>
> (i) In General
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> Any alien who-
>
> (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
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> (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.

Individuals 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). Section 212(a)(9)(C)(ii) of the Act provides, in pertinent part:

> 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 of Homeland Security has consented to the alien's reapplying for admission.

II. ANALYSIS

The issues presented on appeal are whether the Director erred in in denying the Applicant's waiver application as a matter of discretion solely based on his inadmissibility under section 212(a)(9)(C)(i) of the Act and whether the record establishes extreme hardship to a qualifying relative, the Applicant's spouse. The Applicant does not contest the findings of inadmissibility for accruing more than one year of unlawful presence and for entering the United States without being admitted after having accrued unlawful presence, determinations supported by the record.

On appeal, the Applicant contends that the Director erred in denying his waiver application as a matter of discretion solely based on his inadmissibility under section 212(a)(9)(C)(i) of the Act and claims that the record establishes extreme hardship to his spouse. In support of the Applicant's assertions of extreme hardship, the Applicant has submitted additional statements from himself and his spouse and medical records pertaining to his young daughter and infant son.

The record establishes that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, and as he has not been outside the United States for ten years since his last departure, he is statutorily ineligible to seek permission to reapply for admission to the United States under section 212(a)(9)(C)(ii) of the Act. Therefore, no purpose would be served in granting a waiver under section 212(a)(9)(B)(v) of the Act, as the Applicant would remain inadmissible.

A. Inadmissibility

As stated above, the applicant has been found inadmissible under section 212(a)(9)(B)(i) of the Act for unlawful presence, specifically having entered the United States without inspection in 1999 or 2000 and remaining until 2005. In 2005 the Applicant departed the United States after having accrued five years of unlawful presence, and he reentered the United States without inspection in 2008, remaining until February 2015. He was therefore also found to be inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

B. Waiver

The Applicant seeks a waiver under section 212(a)(9)(B)(v) of the Act and claims that refusing him admission would result in extreme hardship to his spouse. However, he is also inadmissible under section 212(a)(9)(C)(i) of the Act. An individual who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission before having been outside the United States for more than 10 years since the date of 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); *Matter of Diaz and Lopez,* 25 I&N Dec. 188 (BIA 2010). Thus, to overcome 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* USCIS has consented to the applicant's reapplying for admission.

In the present matter, the Applicant's last departure from the United States occurred on February 3, 2015, less than ten years ago. He is currently statutorily ineligible to apply for permission to reapply for admission. The appeal of the denial of the waiver application will therefore be dismissed as a matter of discretion as its approval would not result in the Applicant's admissibility to the United States.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of A-R-M-*, ID# 15947 (AAO Apr. 1, 2016)