U.S. Citizenship and Immigration Services

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

MATTER OF J-J-N-G-

DATE: MAY 12, 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 to lawful permanent resident (LPR) status 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 Director concluded that the Applicant would remain inadmissible under section 212(a)(9)(C)(i) of the Act even if the waiver for his inadmissibility under section 212(a)(9)(B)(i)(II) had been approved, because he has not been outside of the United States for 10 consecutive years.

The matter is now before us on appeal. In the appeal, the Applicant asserts that the Director erred in finding the Applicant inadmissible under section 212(a)(9)(C)(i) of the Act.

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

## I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for unlawful presence; specifically, for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of his last departure from the United States. 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—
>
> . . .

> (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.

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.

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
>
> . . .
>
> And who enters or attempts to reenter the United States without being admitted is inadmissible.

## II. ANALYSIS

The issue to be addressed is whether the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act. The Applicant asserts that under the plain meaning of the statute, he is not inadmissible. The Applicant does not contest the finding of inadmissibility for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act, a determination supported by the record. The record establishes that the Applicant is inadmissible under both sections 212(a)(9)(B)(i)(II) and 212(a)(9)(C)(i)(I) of the Act. Because he has not been outside of the United States for 10 years since his last departure, however, he is not eligible for a waiver for his inadmissibility under 212(a)(9)(C)(i)(I) of the Act; therefore, we will not address his assertions of hardship to his qualifying relative, because no purpose would be served in adjudicating his waiver under section 212(a)(9)(B)(v) of the Act.

### A. Inadmissibility

As stated above, 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 having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of his last departure from the United States. The Applicant was also found to be inadmissible under section

212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), because he had accrued over one year of unlawful presence in the United States and subsequently reentered without inspection.

The record reflects that the Applicant entered the United States in 1981 without inspection. He filed a Form I-687, Application for Status as a Temporary Resident, which was denied in 1989. His appeal of the denied Form I-687 was dismissed on January 7, 1998. The Applicant asserts that he was deported from the United States in 1999 and reentered the United States without inspection in either March or April 2000. However, the record does not include evidence of a 1999 deportation. On December 5, 2001, an Immigration Judge granted the Applicant voluntary departure, and he complied by timely leaving the United States for Mexico on December 13, 2001. He subsequently reentered the United States without inspection and returned to Mexico on February 16, 2015, for a consular interview.

The Applicant accrued over one year of unlawful presence between January 8, 1998, when his Form I-687 appeal was dismissed, and December 5, 2001, when he was granted voluntary departure. He also accrued unlawful presence from the date of his last unlawful entry, sometime after December 2001, until his departure on February 16, 2015. The Applicant is therefore inadmissible under section 212(a)(9)(B)(i)(I) of the Act, for having been unlawfully present in the United States for one year or more and seeking admission within 10 years of the date of his departure. The Applicant also is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, because he was unlawfully present in the United States for an aggregate period of more than one year and reentered the United States without being admitted.

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 10 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* USCIS has consented to the Applicant's reapplying for admission.

The Applicant asserts that U.S. consular officers granted him consent to reapply for admission in February 2015. However, the record reflects that U.S. consular officers provided him the opportunity to file Form I-601, Application for Waiver of Grounds of Inadmissibility; and Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, also known informally as "consent to reapply." The record does not include an approval of either of these applications.

B. Waiver

In the present matter, the Applicant's last departure from the United States occurred on February 16, 2015, less than 10 years ago. He is currently statutorily ineligible to apply for permission to reapply

for admission. As such, no purpose would be served in adjudicating his waiver under section 212(a)(9)(B)(v) of the Act, and the appeal is dismissed as a matter of discretion.

The record also reflects that the Applicant was convicted of several crimes in the United States that may involve moral turpitude. We will not analyze his potential inadmissibility for these convictions in the instant decision, however, because the Applicant is otherwise inadmissible.

## 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 J-J-N-G-*, ID# 16624 (AAO May 12, 2016)