



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

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

MATTER OF R-A-A-

DATE: MAY 16, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Costa Rica, 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 Director concluded that since the Applicant had been found inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for having accrued unlawful presence and re-entering the United States without inspection, he was ineligible to apply for permission to reapply for admission to the United States until he had resided outside the United States for ten years and therefore denied the waiver application as a matter of discretion. The Applicant appealed the decision to this office, and we dismissed the appeal on November 18, 2014, after finding that the Applicant was statutorily ineligible to apply for permission to reapply for admission to the United States. The Applicant filed a subsequent motion, which we denied on September 3, 2015.

The matter is now before us on motion to reopen and reconsider. In the motion, the Applicant submits additional evidence and claims that he entered the United States in 1995 with a student visa and did not accrue unlawful presence from 1997 to 2004, and that the decisions denying his waiver application were in error as a matter of law. The Applicant submits translated migration records from Costa Rican authorities and a copy of two pages of the Applicant's passport.

Upon review, we will deny the motion.

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for unlawful presence. Specifically, the record indicates that the Applicant entered the United States in 1995 and accrued unlawful presence from April 1, 1997, until he departed in 2004.

Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent parts:

(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.

(ii) Construction of Unlawful Presence

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.

The Applicant was also found inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act. Specifically, the Applicant entered the United States in 1995 and remained beyond the authorized period of stay until he departed in 2004. The Applicant then re-entered the United States without inspection in 2006.

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

....

(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.

A foreign national 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); *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.

II. ANALYSIS

The issue on motion is whether the Applicant is inadmissible pursuant to section 212(a)(9)(C) of the Act for having accrued over one year of unlawful presence and then reentering the United States without inspection. The Applicant was found inadmissible to the United States under section 212(a)(9)(B) of the Act for unlawful presence and under section 212(a)(9)(C) for having re-entered the United States without admission after having accrued over one year of unlawful presence. The Applicant states for the first time on motion that he entered the United States on a student visa in 1995 and claims that, since he entered on a student visa, he did not accrue unlawful presence between April 1, 1997, the effective date of the unlawful presence provisions of the Act, and 2004, when he departed. However, the record indicates that the Applicant entered the United States with a visitor's visa in 1995, and that he did not depart the United States until 2004, accruing over one year of unlawful presence. We conclude that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) for having accrued over one year of unlawful presence between April 1, 1997, and 2004, then reentering the United States without inspection in 2006. We further conclude that the Applicant is statutorily ineligible for permission to reapply for admission under section 212(a)(9)(C)(ii), and no purpose would be served in granting a waiver under section 212(a)(9)(B)(v) of the Act, as he would remain inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

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 in 1995 and remaining in the United States in unlawful status until he departed in 2004.

The documentation submitted on motion does not support the Applicant's assertion that he entered the United States on a student visa in 1995. USCIS records indicate that the Applicant entered the United States with a B2 visitor's visa on March 4, 1995, and remained beyond the authorized period of stay until he departed in 2004. The migration record from Costa Rica also indicate that the Applicant departed Costa Rica on March 4, 1995, entered Costa Rica on November 27, 2004, and again departed on March 4, 2006.

The record indicates that the Applicant entered the United States with a B2 visa on March 4, 1995, and remained until he departed in 2004. It is not clear when his period of authorized stay expired, but a B2 visitor is normally admitted for 6 months and generally not more than one year. USCIS records do not indicate that he filed for or received any extension of his B2 status. The record therefore establishes that the Applicant began accruing unlawful presence on April 1, 1997, the effective date of the unlawful presence provisions of the Act, and remained unlawfully present until his 2004 departure.

The Applicant states that he re-entered the United States without inspection in April 2006. The evidence on the record therefore supports the finding that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

B. Waiver

The Applicant has applied for a waiver of his unlawful presence under section 212(a)(9)(B)(v) of the Act. Based on a review of the record we find that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act. In the present matter, the Applicant's last departure from the United States occurred in 2010, less than ten years ago. As discussed above, an alien 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); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).

The Applicant is currently statutorily ineligible to apply for permission to reapply for admission. We dismissed the Applicant's appeal as a matter of discretion because no purpose would have been served in granting the waiver application as he would have remained inadmissible under section 212(a)(9)(C)(i)(I) of the Act. We find no basis to disturb this determination as the Applicant has not established that finding him inadmissible under section 212(a)(9)(C)(i)(I) was erroneous. As such, no purpose would be served in adjudicating his waiver under section 212(a)(9)(B)(v) of the Act.

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 motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of R-A-A-*, ID# 16263 (AAO May 16, 2016)