U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-P-L-

DATE: OCT. 4, 2016

APPEAL OF DALLAS, TEXAS FIELD OFFICE 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 Dallas Field Office Director, Irving, Texas, denied the application. The Director concluded 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), and under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I). The Director denied the waiver application as a matter of discretion because the Applicant did not qualify for a waiver of the ground of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and states that the Director erred by not considering the extreme hardship the Applicant's spouse and children would suffer if the Applicant is refused admission.

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

I. LAW

The Applicant is seeking to adjust status to that of a lawful permanent resident. He was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than a year and seeking readmission within 10 years of his last departure from the United States.

Section 212(a)(9)(B)(i)(II) of the Act provides that an alien who "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 contains a waiver of this inadmissibility "if it is established . . . that refusal of admission . . . would result in extreme hardship to the [alien's] citizen or lawfully resident spouse or parent. . . ."

The Applicant was also found inadmissible under section 212(a)(9)(C)(i)(I) of the Act for reentering the United States without inspection after accruing an aggregate period of unlawful presence of more than one year.

Section 212(a)(9)(C)(i)(I) of the Act provides that an alien who "has been unlawfully present in the United States for an aggregate period of more than one year . . . . and who enters or attempts to reenter the United States without being admitted is inadmissible."

Pursuant to section 212(a)(9)(C)(ii) of the Act, there is an exception for alien's 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.

Pursuant to section 212(a)(9)(C)(iii) of the Act, a waiver is available in the case of an alien "who is a VAWA self-petitioner if there is a connection between . . . the alien's battering or subjection to extreme cruelty . . . *and* the alien's removal, departure from the United States, reentry or reentries into the United States[,] or attempted reentry into the United States."

II. ANALYSIS

The issues we address on appeal are whether the Applicant is inadmissible under section 212(a)(9)(C) of the Act, and if so, whether he qualifies for a waiver of that inadmissibility. The Director correctly determined that the Applicant is inadmissible under section 212(a)(9)(B)(i)(II), and the Applicant does not contest that finding on appeal. As discussed below, because we concur with the Director that the Applicant is inadmissible under section 212(a)(9)(C) of the Act and no exception or waiver is available for that inadmissibility, we will not further discuss the Applicant's section 212(a)(9)(B)(i)(II) inadmissibility or eligibility for a waiver of that inadmissibility.

The record reflects that the Applicant first entered the United States without inspection in February 1998, and he accrued unlawful presence until his departure in June 1998. The Applicant recounted in a sworn statement that he reentered the United States without inspection in November 1999 and he remained until his departure in February 2007. The Applicant therefore accrued an additional period of over seven years of unlawful presence before he departed the United States. The Applicant stated that he returned to the United States without inspection the following day, and he has remained in the United States since his February 2007 reentry. The Director correctly determined

that the Applicant is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(C)(i)(I) of the Act. The Applicant does not contest his inadmissibility on appeal.

On appeal, the Applicant states that the Director based the decision on the Applicant's spouse "being a battered spouse and that is not the case." The Applicant requests that we consider the hardships his spouse would suffer if he is refused admission. The Applicant misinterprets the basis of the Director's decision. The Director stated that only Violence Against Women Act (VAWA) self-petitioners qualify for a waiver of the ground of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act. *See* section 212(a)(9)(C)(iii) of the Act. The Director correctly concluded that since the Applicant is not a VAWA self-petitioner, his inadmissibility under section 212(a)(9)(C)(i)(I) of the Act cannot be waived.

An exception to the ground of inadmissibility under section 212(a)(9)(C)(i)(I) of the Act is available to the Applicant under section 212(a)(9)(C)(ii) of the Act if the Secretary of Homeland Security has consented to his reapplying for admission. However, a foreign national cannot be granted permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act unless he or she has been outside the United States for more than 10 years since the date of his or her last departure from the United States. *Matter of Torres-Garcia*, 23 I&N Dec. 866, 873 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355, 358-59 (BIA 2007). Thus, to avoid inadmissibility under section 212(a)(9)(C)(i)(I) 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 this case, the Applicant has been residing in the United States since his last reentry without inspection in February 2007. The Applicant is thus statutorily ineligible to apply for permission to reapply for admission. Given that no waiver or exception is available for the Applicant's section 212(a)(9)(C) inadmissibility, he remains inadmissible and ineligible for adjustment of status. The Applicant also seeks waiver of his section 212(a)(9)(B)(i)(II) inadmissibility. But the purpose of the waiver application is to remove inadmissibility as a bar to adjustment of status. *See generally* 8 C.F.R. § 212.7(a)(1). As that purpose cannot be served in this case, the waiver application is properly denied in the exercise of discretion.

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. Here, that burden has not been met. The Applicant is inadmissible under section 212(a)(9)(C) of the Act, and he has not demonstrated that any exception or waiver of that ground of inadmissibility apply.

ORDER: The appeal is dismissed.

Cite as *Matter of R-P-L-*, ID# 10243 (AAO Oct. 4, 2016)