



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

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

MATTER OF J-M-A-A-

DATE: SEPT. 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 Honduras, 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 determined that the Applicant is 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 one year or more, and again seeking admission within 10 years of the date of his departure or removal from the United States. The Director concluded that since the Applicant also is 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 unlawful presence and reentering the United States without inspection, he is ineligible to apply for permission to reapply for admission to the United States until he has remained outside of the United States for 10 years. The Director therefore denied the waiver application as a matter of discretion, because the Applicant would remain inadmissible even if it were approved.<sup>1</sup>

The matter is now before us on appeal. In the appeal, the Applicant submits a brief and additional evidence. He claims that the Director erred in finding him inadmissible pursuant to section 212(a)(9)(A) of the Act, because he left the United States pursuant to an order of voluntary departure. The Applicant asserts that the Director erred in finding that no purpose would be served in approving the waiver application.

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

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<sup>1</sup> The Director also determined that the Applicant is inadmissible pursuant to section 212(a)(9)(A) of the Act, as a foreign national who has been ordered removed or departed the United States while an order of removal was outstanding and who again seeks admission within 10 years of the date of such foreign national's departure or removal.

## I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for unlawful presence. Section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i), provides that a foreign national who has been unlawfully present in the United States for 1 year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(ii) of the Act provides that a foreign national is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay or is present in the United States without being admitted or paroled.

The Applicant also has been found inadmissible for reentering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than 1 year. Section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), provides that any foreign national who has been unlawfully present in the United States for an aggregate period of more than 1 year, or has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible.

Foreign nationals 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), which provides that inadmissibility shall not apply to a foreign national seeking admission more than 10 years after the date of last departure from the United States if, prior to the 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 foreign national's reapplying for admission.

## II. ANALYSIS

The Applicant was found inadmissible under section 212(a)(9)(B)(i) of the Act for unlawful presence, and under section 212(a)(9)(C)(i)(I) of the Act, for reentering the United States without being admitted after having accrued more than 1 year of unlawful presence. The Applicant does not contest these findings of inadmissibility, which are supported by the record.<sup>2</sup> The Applicant is statutorily ineligible to apply 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.

The Applicant has applied for a waiver of his unlawful presence inadmissibility under section 212(a)(9)(B)(v) of the Act. Based on a review of the record, we concur that the Applicant is

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<sup>2</sup> The record reflects that the Applicant entered the United States unlawfully in 2003. The Director determined that the Applicant accrued more than 1 year of unlawful presence between 2003 and 2006, when he departed. The Applicant filed a Form I-589, Application for Asylum and for Withholding of Removal, while in removal proceedings. Foreign nationals present in unlawful status do not accrue unlawful presence while their asylum applications are pending. See section 212(a)(9)(B)(iii)(II) of the Act. The Applicant filed a Form I-589 on April 21, 2005. He nonetheless accrued more than 1 year of unlawful presence between his entry in 2003 and the date he filed his asylum application. He reentered the United States unlawfully in 2007.

(b)(6)

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inadmissible under section 212(a)(9)(C)(i)(I) of the Act. The record establishes that the Applicant last departed the United States in 2011, less than 10 years ago. As he has not remained outside the United States for 10 years since his last departure, he is statutorily ineligible to apply for permission to reapply 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 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 10 years ago, the Applicant has remained outside the United States and USCIS has consented to the Applicant's reapplying for admission.<sup>3</sup>

The Applicant asserts on appeal that we may adjudicate his waiver application, even if he remains ineligible to request permission to reapply for admission. A waiver of inadmissibility, however, is not a "stand alone" application; it accompanies an application for an immigrant visa application or adjustment of status to that of a lawful permanent resident for the purpose of removing the inadmissibility bar to eligibility. *See Matter of Rivas*, 26 I&N Dec. 130, 132 (BIA 2013). The Applicant's immigrant visa application was denied because he is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(C)(i)(I) of the Act. He is currently statutorily ineligible to apply for permission to reapply for admission. We therefore will dismiss the Applicant's appeal as a matter of discretion, because no purpose would be served in approving the waiver application, as he would remain inadmissible under section 212(a)(9)(C)(i)(I) 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. He has not remained outside the United States for at least 10 years since his last departure and is ineligible to seek permission to reapply for admission into the United States; thus approval of his waiver application would serve no purpose.

**ORDER:** The appeal is dismissed.

Cite as *Matter of J-M-A-A-*, ID# 17223 (AAO Sept. 12, 2016)

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<sup>3</sup> The Director determined that the Applicant is inadmissible pursuant to section 212(a)(9)(A) of the Act, for having been ordered removed. The record shows that the Applicant was granted voluntary departure until [REDACTED] 2006, and that the Applicant complied by departing from the United States on that date. He therefore did not depart from the United States pursuant to a removal order.