U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-Z-R-

DATE: OCT. 30, 2017

APPEAL OF CHICAGO, ILLINOIS FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Mexico, has applied to adjust status to that of a lawful permanent resident. A foreign national seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for three years for having been unlawfully present in the United States for more than 180 days but less than one year. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(i)(I), 8 U.S.C. § 1182(a)(9)(B)(i)(I). U.S. Citizenship and Immigration Services may grant a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Director of the Chicago, Illinois Field Office denied the application, finding the Applicant had not established that his inadmissibility would result in extreme hardship for his U.S. citizen father, his only qualifying relative.

On appeal, the Applicant contends that the Director erred in finding him inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act as his adjustment of status application was not filed until the three-year period of his inadmissibility had elapsed. The Applicant submits a brief, as well as an unpublished 2014 Board of Immigration Appeals (the Board) decision in support of his claim.

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

I. LAW

A foreign national who voluntarily departs the United States after having been unlawfully present for more than 180 days but less than one year and who seeks admission within three years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i)(I) of the Act. A foreign national is deemed to be unlawfully present in the United States if he or she remains in the United States after the expiration of a period of authorized stay or if present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act.

This inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent. Section 212(a)(9)(B)(v) of the Act.

II. ANALYSIS

The record reflects that at his adjustment of status interview, the Applicant testified that he entered the United States without inspection in March 1994 and remained here until he returned to Mexico in December 1997, triggering the unlawful presence provisions under the Act. He further stated that he returned to the United States in March 1998, again entering without inspection, and has not departed since that time. Accordingly, the record establishes that the Applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until his December 1997, a period of approximately eight months.

On appeal, the Applicant does not dispute the period of unlawful presence that resulted in his inadmissibility under section 212(a)(9)(B)(i)(I) of the Act. Rather, he maintains that as an applicant for adjustment of status more than 19 years after his 1997 departure, he is no longer subject to the three-year bar that once rendered him inadmissible to the United States.

The Applicant asserts that the Director erred in determining that his unlawful return to the United States in March 1998 stopped the clock on the three-year bar to his admission and claims that neither the Act nor any legal precedent supports the finding that the three-year period of inadmissibility runs only while outside the United States. He contends that section 212(a)(9)(B)(i)(I) of the Act does not mention "entry" but rather only "admission," which is defined by section 101(a)(13)(A) of the Act, 8 U.S.C. § 1101(a)(13)(A), as meaning a "lawful entry into the United States after inspection and authorization by an immigration officer," a definition expanded by the Board of Immigration Appeals (the Board) to include adjustment of status. He further maintains that if the U.S. Congress had wanted unlawful reentry to affect inadmissibility under section 212(a)(9)(B) of the Act, that intent would have been reflected in the language of the statute, as was done with section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C). In this regard, the Applicant also asserts that only section 212(a)(9)(C) of the Act specifies that those barred by its provisions remain outside the United States until such time as they obtain permission to return and that section 212(a)(9)(B)(i)(I) of the Act must, therefore, be read as allowing the Applicant to have resided in the United States during the three years his admission to the United States was barred.[1] In support of his claims, the Applicant points to this office's non-precedent decision in *Matter of Salles-Vaz* (AAO Feb. 22, 2005) and an unpublished 2014 Board decision, *Jose Armando Cruz*, A087 241 021 (BIA Apr. 9, 2014).

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[1]. Section 212(a)(9)(C)(ii) of the Act specifies that an individual must remain outside the United States for 10 years before applying for permission to reapply for admission, but this 10-year period is unrelated to underlying inadmissibility under section 212(a)(9)(C)(i) of the Act, which, unlike section 212(a)(9)(B) of the Act, is a permanent ground of inadmissibility.

The Applicant's argument that his three-year period of inadmissibility elapsed even though he had returned to the United States does not consider the significance of departure as the trigger for inadmissibility under section 212(a)(9)(B)(i) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 910 (BIA 2006). We find the fact that inadmissibility under this section attaches only upon departure to reflect the Congress' intent to prevent foreign nationals, once outside the United States, from reentering within the specified period.

We cannot conclude that the Congress created a penalty for unlawful presence that may be circumvented by new violations of immigration law. An unlawful return to the United States before the bar in section 212(a)(9)(B)(i)(I) of the Act has expired results in another immigration violation and the commencement of another period of unlawful presence that may serve as a future basis for inadmissibility under section 212(a)(9)(B) of the Act. As a result, we find that allowing the Applicant to run out the clock on the bar to his admission while accruing additional unlawful presence in the United States would be contrary to the congressional intent underlying the creation of section 212(a)(9) of the Act. Thus, we find the consequences imposed by the three-year bar in section 212(a)(9)(B)(i)(I) of the Act still apply and that the Applicant remains inadmissible under section 212(a)(9)(B)(i)(I) of the Act.

Although we note the Applicant's reference to our 2005 non-precedent decision and his submission of the Board's decision in *Jose Armando Cruz*, neither requires our deference in this matter. *Salles-Vaz* was not published as a precedent and, therefore, binds only the parties to that case. *See* 8 C.F.R. § 103.3(c). Moreover, although it involved inadmissibility under section 212(a)(9)(B) of the Act, the non-precedent AAO decision cited by the Applicant involved a foreign national who had reentered with advance parole, while the Applicant reentered the United States without inspection. Further, while the Board's decision in *Jose Armando Cruz* addresses the issue of unlawful reentry in the context of section 212(a)(9)(B) inadmissibility, its reasoning appears contrary to our understanding of the intent of the unlawful presence provisions under the Act, as discussed above. In that the decision is unpublished, it establishes no precedent that must be followed here.

For the reasons discussed, the Applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act. Although this inadmissibility may be waived by a showing that a denial of the waiver application would result in extreme hardship to a qualifying relative, the Applicant does not claim hardship to a qualifying relative, i.e., his U.S. citizen father. Therefore, the record does not demonstrate the Applicant's eligibility for a waiver of his section 212(a)(9)(B)(i)(I) inadmissibility.

III. CONCLUSION

The record reflects that the Applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act. He has not, however, established that his U.S. citizen father, his only qualifying relative, would experience extreme hardship if the waiver application is denied, as required for a waiver under section 212(a)(9)(B)(v) of the Act. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of T-Z-R-*, ID# 609003 (AAO Oct. 30, 2017)