



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

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

In Re: 23349416

Date: NOV. 18, 2022

Appeal of San Francisco, California Field Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant seeks permission to reapply for admission to the United States under section 212(a)(9)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii), because he is inadmissible for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year.

The Director of the San Francisco, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the Applicant did not establish his statutory eligibility for the benefit sought because the record lacked evidence showing he has remained outside of the United States for at least 10 years since his last departure. The matter is now before us on appeal.

We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we conclude that the Applicant has not met this burden. Accordingly, we will dismiss the appeal.

## I. LAW

A noncitizen 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 departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i) of the Act. A noncitizen is deemed to be unlawfully present in the United States if present after the expiration of the 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.

Section 212(a)(9)(C)(i) of the Act provides that a noncitizen 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.”<sup>1</sup> Pursuant to section 212(a)(9)(C)(ii) of the Act, there is an exception for any noncitizen seeking admission more than 10 years after the date of their last departure from the United States if, prior to their 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 their reapplying for admission.

Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg’l Comm’r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant’s moral character; the applicant’s respect for law and order; evidence of the applicant’s reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant’s services in the United States. *Matter of Tin*, 14 I&N Dec. 371 (Reg’l Comm’r 1973).

## II. ANALYSIS

The record reflects that the Applicant entered the United States without being inspected and admitted or paroled on at least three occasions and in each instance, accrued more than one year of unlawful presence. Specifically, the Applicant indicates that he initially entered the United States without inspection in August 1994 and did not depart until November 1999. He later re-entered without inspection in March 2001 and departed in December 2004, and then re-entered without inspection in January 2005 and remained in the United States until April 2008. The Applicant indicates that he has not re-entered the United States since that time.

In 2008, a U.S. Department of State consular officer found that the Applicant was inadmissible under section 212(a)(9)(C)(i)(I) of the Act for accruing more than one year of unlawful presence and reentering without being inspected and admitted or paroled. The Applicant filed the Form I-212 in April 2019. The Director, after issuing a request for evidence (RFE) and notice of intent to deny (NOID) determined that the Applicant did not establish his eligibility for permission to reapply for admission because the record lacked evidence showing that he has remained outside the United States for 10 years since his claimed last departure in April 2008. Therefore, the Director did not consider whether the application warranted a favorable exercise of discretion.

On appeal, the Applicant maintains that the previously submitted evidence was sufficient to establish that he was physically present outside the United States for at least 10 years since his April 2008 departure. Upon review, for the reasons discussed below, we agree with the Director’s determination that the Applicant did establish his physical presence outside the United States for ten years and therefore did not demonstrate his statutory eligibility to apply for an exception to his inadmissibility under section 212(a)(9)(C)(ii).

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<sup>1</sup> The accrual of unlawful presence for purpose of inadmissibility determinations under section 212(a)(9)(B)(i) or 212(a)(9)(C)(i) of the Act begins no earlier than the effective date of the amendment enacting this section, which is April 1, 1997.

As noted, the Applicant filed his Form I-212 in April 2019. His initial evidence of absence from the United States included copies of prescription orders from the office of [redacted] and [redacted] located in [redacted] Mexico. The prescription orders identify the Applicant as the patient and, according to the English translations, are dated in August 2008, February 2010, July 2012, August 2016, and July 2017.

The Applicant provided copies of boarding passes indicating that his spouse traveled from California to [redacted] Mexico from August 15 to August 17, 2018. He also submitted copies of his spouse's current and previous U.S. passports containing stamps confirming the following travel:

- Arrival in [redacted] Mexico on April 17, 2008.
- Arrival in [redacted], Mexico on December 16, 2009;
- Arrival in and departure from [redacted] Mexico in April 2016 (exact dates illegible);
- Arrival in and departure from [redacted], Mexico on August 15, 2018 and August 17, 2018, respectively.

Finally, statements from the Applicant's spouse and other family members generally mentioned the Applicant's ten-year absence from the United States and attested to the hardships she faced as a result of the separation.

In a request for evidence, the Director advised the Applicant that the initial evidence was insufficient to show that he had been physically outside the United States for the required ten-year period. The Director requested that he provide evidence for each year of the ten-year period he claims he spent outside the country and advised him that affidavits and letters would be given minimal weight without corroborating evidence. The Director also provided a non-exhaustive list of the types of evidence he could submit, such as tax statements, payroll stubs, voting registration records, rent or mortgage payments, utility and phone bills, medical or school records, evidence of money transfers, bank statements, additional travel records showing visits from family members, or any other evidence to prove his absence from the United States.

In response to the RFE, the Applicant submitted copies of his driver's licenses issued by the State of [redacted] on June 17, 2010 and August 12, 2020 (both valid for nine years from the date of issuance). He also provided copies of his spouse's Verizon monthly billing statements for the period January 2019 through May 2020. The statements show telephone calls to the same number in Mexico (with a [redacted] area code) at least once a month during this period.<sup>2</sup> The Applicant's spouse also provided a letter dated October 17, 2020, explaining that it was very difficult for the Applicant to collect documentation due to COVID-19 pandemic-related closures and restrictions.

The Director subsequently issued a notice of intent to deny (NOID). The Director advised the Applicant that the documentation submitted with the Form I-212 and response to the RFE was insufficient to demonstrate that he had been physically outside the United States for the required ten-year period. The Director noted that he should submit "ample evidence for each year that supports your assertion that you have not been in the United States for 10 years since your April 2008

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<sup>2</sup> These statements were not accompanied by evidence demonstrating that the telephone number called belongs to the Applicant.

departure.” The NOID further observed that the record lacked any documentation from the years 2011, 2013, 2014 and 2015.

The Director also acknowledged the Applicant’s claims regarding the difficulties of obtaining official documentation during the pandemic:

USCIS understands that it can be difficult to obtain official documentation. Please provide us with as much documentation as possible, official or unofficial, with particular attention given to official and certified documentation. Unofficial documentation can include but is not limited to photographs and affidavits from friends, family and neighbors in Mexico, attesting to how they know you, how long they have known you, and how often they see you.

The Director once again provided a list of the types of documentation the Applicant could provide. The Applicants response to the NOID consisted of evidence described as “letters from 47 individual witnesses, including a representative of [the Applicant’s] church, his physician, employees of local business[es] [he] has patronized over the years, and neighbors and friends of [the Applicant].”

The Director denied the petition noting that USCIS had reviewed the 47 witness statements, but found them insufficient, in the absence of corroborating or supplemental evidence, to establish the Beneficiary’s absence from the United States in each of the ten years since his last departure.

On appeal, the Applicant, through counsel, asserts that he provided a reasonable explanation for his inability to provide more official documentation, and offered a large number of “unique yet internally consistent letters from members of his community” sufficient to offset the lack of official or certified documents. The Applicant contends that the Director erroneously and unfairly chose to give this evidence “minimal weight” without explaining why the letters were lacking in relevance, probative value, or credibility. The Applicant maintains that he provided some evidence of his absence from the United States for each year since 2008 and therefore met his burden to establish that he is statutorily eligible to apply for consent to apply for admission under section 212(a)(1)(C)(ii) of the Act.

Upon *de novo* review, we agree with the Director’s determination that the Applicant did not meet his burden to establish his absence from the United States for at least ten years since his last known departure in April 2008. As noted by the Director in the NOID, evidence from the years 2011, 2013, 2014 and 2015 was lacking based on the documentation submitted at the time of filing and in response to the RFE. Therefore, we must determine whether the Applicant established, by a preponderance of the evidence, that he remained outside the United States during these years.

The “preponderance of the evidence” standard requires that the evidence demonstrate that the claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989)). The truth is to be determined not by the quantity of evidence alone but by its quality. Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, USCIS must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

Many of the witness letters submitted in response to the NOID are undated and written by persons who claim to be employees of various business establishments in the town of [redacted] in [redacted] Mexico. Most of the individuals who provided letters indicate the type of establishment at which they are employed, but they do not identify the name or address of the business, do not state when they started working there, and do not otherwise indicate how they are able to recall a specific year when they first encountered the Applicant as a customer. For example, one of the letters states: “My name is [Mario H- G-] and I write this letter for [the Applicant]. I work at the fodder store of the town of [redacted] and I have personally known [the Applicant] for 10 years as he comes to the shop whenever he needs something related to fodder.” Similar letters in the same format were provided by individuals who state they are employed by “the diner,” “the baker,” “the vet,” “the tortilla shop,” “the burger stand” “the fish shop,” “the butcher,” “the blacksmith shop,” “the market,” “the mini market,” “the shoe store,” and other businesses. While some of these individuals mention that they first met the Applicant in 2011, 2013, 2014 or 2015, or state that the Applicant has been a regular customer since 2008 or 2010, they are lacking in probative details. Therefore, we find that the Director did not err by finding these letters lacking in probative value and giving them less evidentiary weight. As noted above, in determining whether the Applicant has met his burden of proof, we examine the quality of the evidence provided and do not base the determination solely on the volume or quantity of evidence submitted.

In addition to the letters from employees of local businesses, we acknowledge that several witness letters are from persons who state they are the Applicant’s neighbors. The language used in many of these letters is identical. For example, five individuals write “I am his neighbor as we reside in the same location corresponding to [redacted] when he goes out to run errands and perform his corresponding duties. [The Applicant] has been living at that address for the last 10 to 11 years since around 2010.” While a few of the other letters contain slightly different language, they are all similarly general and none of the individuals who state they are neighbors provide their own address (which would corroborate their residence) or relate any details regarding the Applicant beyond noting that they have seen him around town.

In addition, the Applicant’s response to the NOID included a “Medical Certificate” from a [redacted] [redacted] indicating that he is a licensed general practitioner in [redacted] This physician identifies the Applicant as a patient whose first appointment was on August 6, 2010, states that he “later came to checkups once a year on average,” and indicates that his medical records reflect three office visits in 2016. While this certificate can be given greater weight than the witness letters described above, it is lacking details (such as the dates of the Applicant’s subsequent office visits) and corroborating evidence (such as the referenced medical records) showing that the Applicant visited this physician in each year since 2010.

The record also includes an undated letter from a parish priest of the Archdiocese of [redacted] in [redacted] [redacted] who certifies that the Applicant “occasionally attends” Sunday services and who, “in the last 10 years” has been “baptized, confirmed and held his First Communion.” The priest does not state how long he has been at the parish where the Applicant attends services. Further, while we do not doubt the priest’s statement that the Applicant has occasionally attended Sunday services in his parish, this letter lacks probative details, such as the dates of the referenced baptism, confirmation and first communion, and is insufficient to establish his continuous presence in Mexico.

We acknowledge the Applicant's assertions that the pandemic and related restrictions have made it difficult to obtain "official" or "certified" documentation. However, we note that the Applicant filed the Form I-212 in April 2019, prior to the pandemic, and the record reflects that the Applicant was aware of his burden to submit evidence of his absence from the United States at that time. The only evidence he initially provided from his own records were copies of five prescription orders that did not cover the ten-year period, and it has not been explained why other objective evidence showing his residence and daily life in Mexico would have been unavailable or unobtainable in 2019. Even with the subsequent pandemic-related restrictions, it is not unreasonable to determine that the Applicant would reasonably have some of the evidence suggested by the Director (utility, telephone or other bills, lease or mortgage statements, voter registration, evidence of employment or other evidence of income, tax records, photographs with friends or family, bank statements, or any other types of documents). Despite having three subsequent opportunities to supplement the record, the only supporting evidence the Applicant produced from his own records were the prescription orders and copies of his driver's licenses.

Further while the Director indicated in the NOID that the Applicant could also submit unofficial documentation such as "photographs and affidavits from friends, family and neighbors in Mexico," the NOID advised him that such evidence should be supplemented with objective documentation where possible. The evidence submitted in response to the NOID did not include photographs and affidavits from friends, family or others who claim a close relationship with the Applicant, such as co-workers; it consisted primarily of very general, informal letters from persons who claimed they had seen the Applicant at their places of employment.

Therefore, after reviewing the evidence individually and in its totality, we agree with the Director's conclusion that the Applicant did not meet his burden to establish, by a preponderance of the evidence, his absence from the United States for the requisite 10-year period and therefore did not establish his statutory eligibility to apply for an exception to his inadmissibility under section 212(a)(1)(C) of the Act. Accordingly, the application will remain denied.

**ORDER:** The appeal is dismissed.