U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16899709

Date: APR. 07, 2022

Appeal of Los Angeles County Field Office Decision

Form I212, Application for Permission to Reapply for Admission

The Applicant seeks permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), because he will be inadmissible upon departing from the United States for having been previously ordered removed.

The Director of the Los Angeles County Field Office denied the application, concluding that the record did not establish that the Applicant met the statutory requirements for the requested benefit, and that the favorable factors in his case did not outweigh the negative factors such that a favorable exercise of discretion was warranted.

The matter is now before us on appeal. In his appeal brief, the Applicant states that the Director erred by failing to recognize that his application was filed for conditional approval pursuant to 8 C.F.R. § 212.2(j), misinterpreting that he was filing for deportation relief, and providing an insufficient analysis of the positive and negative factors in his case.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. §1361. Upon *de novo* review, we will withdraw the Director's decision and remand this matter for the entry of a new decision consistent with the following analysis.

I. LAW

The Applicant is seeking permission to reapply for admission to the United States and has been found inadmissible for having been previously ordered removed.

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any alien, other than an arriving alien described in section 212(a)(9)(A)(i), who "has been ordered removed . . . or departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible."

Noncitizens found inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii) if "prior to the date of the reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Secretary of Homeland Security has consented to the foreign national's 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. *See 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. *See Matter of Tin,* 14 I&N Dec. 371 (Reg'l Comm'r 1973); *see also Matter of Lee, supra*, at 278 (Finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character, and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience").

II. ANALYSIS

The Applicant has been found inadmissible under section 212(a)(9)(A) of the Act for having been previously ordered removed. Specifically, the record shows that he entered the United States without inspection on September 20, 1993. On [redacted] 1995, his application for asylum was withdrawn, and he was granted voluntary departure until [redacted] 1996. As the Applicant did not depart, a warrant of deportation was issued on [redacted] 1996. The record indicates that the Applicant has remained in the United States. On June 15, 2009, an immigrant petition filed by his United States citizen spouse was approved.

In his decision, the Director stated that the Applicant did not meet "the statutory threshold requirements for permission to reapply for admission in to the United States," but did not specify which statutory requirements the Applicant failed to meet.[1] As noted above, section 212(a)(9)(A)(iii) of the Act provides that noncitizens found inadmissible under 212(a)(9)(A) may seek permission to reapply for admission, and that approval of such an application is discretionary and based upon a weighing of unfavorable versus favorable factors. Also, 8 C.F.R. § 212.2(j) provides for advance or conditional approval of permission to reapply for admission for noncitizens whose departure will execute an order of deportation, and the instructions to Form I-212 specifically state that noncitizens who were ordered removed due to inadmissibility under section 212(a)(9)(A) of the Act but remained in the United States and will seek an immigrant visa abroad are eligible for conditional approval as a matter of discretion. Therefore, as the Applicant has an approved immigrant visa petition and has made clear his intent to seek an immigrant visa abroad, he may apply for conditional permission to

[1] The Director also stated that Section 212(a)(9)(A)(iii) of the Act "does not provide relief from deportation, which is what you are requesting." As Form I-212 is not an application for relief from removal, but for permission to reapply for admission to the United States, the basis for the Director's statement is unclear. On remand, the Director should focus on weighing the unfavorable factors in the Applicant's case against the favorable ones, to determine if a favorable exercise of discretion is warranted regarding the benefit requested.

reapply for admission, and to the extent that the Director's decision indicates that he is statutorily ineligible to do so, the decision is withdrawn.

As stated above, when considering whether a request for permission to reapply merits a favorable exercise of discretion, positive factors may include hardship to the applicant and other U.S. citizen or lawful permanent resident relatives, the applicant's respect for law and order, the recency of deportation, the applicant's moral character, and family responsibilities. Here, the Director listed the evidence submitted by the Applicant and provided commentary related to some of the material. Regarding a personal statement from the Applicant, the Director noted that it was not supported by "corroborative evidence of extreme hardship." However, the requirement of establishing extreme hardship to a qualifying relative (or qualifying relatives) does not apply to noncitizens who seek permission to reapply for admission to the United States after deportation or removal. Rather, *any* hardship to the Applicant or his family members is a factor to be considered in the discretionary analysis.

In addition, the Director did not fully address the evidence of significant favorable factors in the record, including the length of his residence in the United States, hardship to the Applicant and his two U.S. citizen children, and family responsibilities. For example, the Applicant has lived in the United States for more than 28 years, has been married for 16 years, and has two U.S. citizen children, and his statement regarding the hardships he and they would suffer if he were removed is supported by tax and mortgage documentation, psychological and medical evaluations, and evidence of country conditions in Guatemala. The record also includes evidence of the Applicant's older son's learning disabilities and the special education services he receives. Further, while the Director concluded that the favorable factors in this case do not outweigh the negative factors, he did not identify the negative factors or provide an analysis of how those factors are outweighed by the favorable factors discussed above.

In light of the deficiencies noted above, we will remand this matter to the Director to reevaluate the submitted evidence applying the appropriate standard and determine whether the Applicant warrants a favorable exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.