U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16634999

Date: APR. 7, 2022

Appeal of Los Angeles, 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)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), because she will be inadmissible upon departing from the United States for having been previously ordered removed.

The Director of the Los Angeles, California Field Office denied the application finding that the Petitioner's application did not merit exercise of favorable discretion. The Director concluded that that the favorable factors in her case do not outweigh the unfavorable ones. The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and states that the Director erred in applying the law, and that the Applicant had submitted the necessary evidence to establish eligibility.

We review the questions raised in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, other than an "arriving alien," who has been ordered removed under section 240 or any other provision of law, or who 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, 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) of the Act 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 noncitizen's reapplying for admission.

In this case, the record reflects that the Applicant currently resides in the United States and she is seeking conditional approval of her application under the regulation at 8 C.F.R. § 212.2(j) before departing the United States to apply for an immigrant visa. Approval of her application under these circumstances is conditioned upon the Applicant's departure from the United States and it will have no effect if she fails to depart.

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); *see also Matter of Lee, supra*, at 278.

II. ANALYSIS

Here, the record reflects, and the Applicant does not dispute, that she entered the United States without admission or inspection in June 1992. She was placed into removal proceedings and was ordered removed *in absentia* in [redacted] 1996, and instructed to report for deportation no later than [redacted] 1996. She did not report as required. The Applicant's [redacted] 2004 motion to reopen the proceeding, shortly after her marriage to a U.S. citizen, was denied in [redacted] 2004; the 1996 removal order still stands. The record thus reflects that upon departure from the United States, the Applicant will become inadmissible for ten years under section 212(a)(9)(A)(ii) of the Act, for having been previously ordered removed. The issue on appeal is whether the Applicant has established that she merits conditional approval of her application for permission to reapply for admission in the exercise of discretion.

The Director determined that the Applicant did not establish the favorable factors outweighed the unfavorable factors in her case, or that she merited a favorable exercise of discretion. On appeal, the Applicant claims that the Director did not properly weigh the favorable factors, and that her Form I-212 should be approved. The Applicant submits new statements from herself, her family members, and others; medical documentation regarding her spouse and her daughter; and information about conditions in Guatemala. Upon review and consideration of the entire record, we agree with the Director's finding that the Applicant has not established the positive factors outweigh the negative factors in her case, or that a favorable exercise of discretion is warranted.

The unfavorable factors in the Applicant's case include several serious immigration violations. She entered the United States without inspection or parole in June 1992. She did not appear at her removal hearing in 1996. She did not depart the country after being ordered removed in [redacted] 1996 or after her motion to reopen the matter was denied in [redacted] 2004. In addition to being unlawfully present in the United States since 1992, she has also been working without employment authorization, at least since 2002 and possibly earlier. The record does not show that she paid taxes on her employment income before 2018; a 2017 income tax return shows only her spouse's income. She also has a criminal record following a conviction for petty theft in 2004. The Applicant does not contest these facts.[1] In terms of remorse and regard for immigration laws, the Applicant states only: "I do regret coming here illegally because it's given m[e] issues I could've avoided."

[1] In the 2004 order denying the Applicant's motion to reopen her removal proceeding, the Immigration Judge

The favorable factors in the Applicant's case include her 2004 marriage to a U.S. citizen, her U.S. citizen daughter, and any hardships the Applicant and her family would experience if she were denied permission to reapply for admission into the country. We agree with the Applicant that she is not required to show *extreme* hardship for exercise of discretion purposes.[2] When hardship exists, however, it is one of the things that we look at when determining the favorable factors in an individual's case. *See Matter of Tin,* 14 I&N Dec. at 373, 374.

The Applicant submits medical documentation relating to her spouse and to her daughter, but has not established that this evidence is material to her claims of hardship. Her spouse had heart surgery in 2018, but there is no evidence that the underlying condition has affected his ability to continue working full-time to support his family. The Applicant's spouse also takes medication for diabetes; nothing shows that the condition is more severe and not controlled by medication alone. Documents on appeal refer to sprain injuries, for which the Applicant has not established the relevance or any lasting effect on her spouse's ability to continue working full-time as he has been doing. It is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361.

The Applicant's daughter also had surgery in 2018, but the record does not show any lasting effects or impairment resulting from either the surgery or the condition that necessitated it. The Applicant's daughter, born in 2003, is now an adult, and the record does not establish a degree of dependence on the Applicant beyond typical family ties.

Various friends and acquaintances attest in general terms to the Applicant's helpfulness and character. General information about conditions in Guatemala shows economic and social difficulties there, but the Applicant does not establish that these issues amount to strong positive factors. The Applicant has submitted tax returns showing that she reported her income in 2018 and 2019, which is a positive factor, but, as noted above, the record does not reflect payment of such taxes in prior years.

In conclusion, we find, upon review of the totality of the record, that the Applicant has not established that the favorable factors in her case (her family and community ties and potential hardship) outweigh the unfavorable factors in her case (her entry into the United States without inspection or parole in June 1992; her failure to appear at her removal hearing, and failure to depart the country after being ordered removed; her presence and employment in the United States without authorization since 1992; and criminal record), or that a favorable exercise of discretion is warranted.

ORDER: The appeal is dismissed.

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acknowledged the Applicant's claim that she was unaware that she had to report any change of address, but the Immigration Judge deemed this claim to be "without merit" because the Applicant had acknowledged receipt of an Order to Show Cause that included the instruction to timely report any change of address. The Immigration Judge also noted that "for over eight years after her deportation order, [the Applicant] made no attempts to inquire about the status of her case."

[2] The Applicant contests the Director's use of the phrase "extreme hardship" in the denial notice. But, for context, it is important to note that the Applicant herself, her spouse, and counsel for the Applicant have all used the phrase "extreme hardship" in their statements and arguments in support of the waiver application. The Director, therefore, appears to be responding specifically to claims of "extreme hardship" that the Applicant put forth in support of the application.