U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16111506

Date: APR. 8, 2022

Appeal of Baltimore Field Office Decision

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

The Applicant will be inadmissible upon his departure from the United States for having been previously ordered deported and 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).

The Director of the Baltimore Field Office in Baltimore, Maryland denied the application in the exercise of discretion because upon departure from the United States, the Applicant would become inadmissible under section 212(a)(6)(B) of the Act, for failing to attend removal proceedings, and there is no waiver for this ground of inadmissibility.

On appeal, the Applicant asserts that he had reasonable cause for failing to attend his removal hearing. The Applicant also contends that the favorable equities outweigh the unfavorable equities in his case, and he should thus be granted conditional approval of his application in the exercise of discretion.

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). This office reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, as explained below, we will remand the matter to the Director for the entry of a new decision.

I. LAW

Section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), provides that any "arriving alien . . . who has been ordered removed under section 235(b)(1) [of the Act, 8 U.S.C. § 1225(b)(1),] or at the end of proceedings under section 240 [of the Act, 8 U.S.C. § 1229a,] initiated upon the arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years 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 noncitizen's reapplying for admission."

Section 212(a)(6)(B) of the Act renders inadmissible any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the noncitizen's inadmissibility or deportability and who seeks admission to the United States within five years of such noncitizen's subsequent departure or removal.

The Applicant currently resides in the United States and is seeking conditional approval of the application under the regulation at 8 C.F.R. § 212.2(j) before he departs, as he will be inadmissible upon his departure due to his 2005 deportation order.[1]

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 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 (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.")

Generally, favorable factors that came into existence after a noncitizen has been ordered deported or removed from the United States ("after-acquired equities") are given less weight in a discretionary determination. *See Garcia-Lopes v. INS*, 923 F.2d 72, 74 (7th Cir. 1991) (less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408, 416 (BIA 1998), need not be accorded great weight by the director in a discretionary determination).

II. ANALYSIS

The issue presented on appeal is whether the Applicant should be granted conditional permission to reapply for admission to the United States in the exercise of discretion. As explained below, we will remand the matter to the Director for the entry of a new decision.

The record reflects that the Applicant entered the United States without inspection in [redacted] 2003. He was subsequently apprehended by border patrol agents and served with Form I-862, Notice to Appear (NTA), which ordered him to appear before an Immigration Judge in [redacted] Texas at a

[1] The approval of the application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if he fails to depart.

date and time to be set. The Applicant did not appear for the scheduled court hearing, and the Immigration Judge ordered him removed from the United States *in absentia*.

The Director determined that the Applicant will be inadmissible under section 212(a)(6)(B) of the Act upon departure for failing to attend his removal proceedings without reasonable cause. The Applicant asserts that he could not have been reasonably expected to comply with the NTA because he was 16 years old at the time. He further asserts that he did not know about the need to attend hearings because the relative who ensured the Applicant's release from custody by signing the Form I-220A, Order of Release on Recognizance, did not present the Applicant for his court hearing. In addition, the Applicant states that he had no familial support that would have enabled him to retain counsel, seek a change of venue closer to where he was residing, and appear in court.

Given the facts presented in this case, it appears that the Applicant may have established reasonable cause for failing to attend removal proceedings, and therefore we cannot affirm the Director's determination that the Applicant's departure will trigger inadmissibility under section 212(a)(6)(B) of the Act. That said, the record reflects that the Applicant has an approved family-based immigrant visa petition and intends to apply for an immigrant visa abroad. Accordingly, the U.S. Department of State (DOS) will make the final determination concerning the Applicant's eligibility for a visa, including whether he is subject to inadmissibility under section 212(a)(6)(B) or any other provisions of the Act.

Notwithstanding the role of DOS in making a final determination on the issue of reasonable cause, the issue that remains in the matter at hand is whether the Applicant's request for permission to reapply merits a favorable exercise of discretion. As detailed above, a variety of favorable and unfavorable factors are generally considered when making this determination, including 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's decision does not contain an analysis of such factors as they pertain to the Applicant.

Considering that the Applicant may not be subject to inadmissibility pursuant to section 212(a)(6)(B) of the Act, pending a final DOS determination at the time of consular processing, we find it appropriate to remand the matter for the Director to reevaluate the submitted evidence and consider whether the Applicant has established that he merits a favorable exercise of discretion related to section 212(a)(9)(A)(i) of the Act.

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