U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20258594

Date: APRIL 12, 2022

Appeal of Memphis, Tennessee 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 removed and seeks permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii). The Director of the Memphis, Tennessee Field Office denied the Form I-212, Application for Permission to Reapply for Admission, concluding that the Applicant did not establish that he warranted a favorable exercise of discretion. The Director also denied a subsequent motion to reopen and reconsider. The Applicant filed an appeal of the decision with this office. 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 remand the matter to the Director for further proceedings.

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 of the Act, 8 U.S.C. § 1229a, 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 contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission. The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010).

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) (discussing and weighing certain unfavorable and favorable factors). 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, 373-74 (Reg'l Comm'r 1973).

II. ANALYSIS

The record reflects that the Applicant entered the United States in 2004 without inspection and was ordered removed in 2018. As such, the Applicant is seeking conditional approval of his application under the regulation at 8 C.F.R. § 212.2(j)[1] before departing from the United States to seek an immigrant visa at a U.S. consulate abroad, as he will be inadmissible upon his departure under section 212(a)(9)(A)(ii) of the Act. On appeal, the Applicant contends that the Director erred by failing to appropriately consider and weigh the submitted evidence. He further contends that the Director erroneously based the denial on unfavorable factors such as his removal order and failure to comply with the removal order, because the purpose of his conditional Form 1-212 is to waive this inadmissibility in order to seek an immigrant visa overseas.

In denying the Form I-212, the Director noted the favorable factors in the record as the Applicant's close family ties in the United States, notably his lawful permanent resident (LPR) spouse, and that his "deportation for less serious reasons." The Director determined that these favorable factors were insufficient to overcome the negative impact of the lack of unusual hardship to the Applicant's LPR spouse or himself; repeated violations of immigration laws; unauthorized employment in the United States; and willful disregard for other laws – specifically two convictions for driving under the influence of alcohol. The Director also accorded the Applicant's family ties to the United States less weight because the Applicant married his spouse in 2017, after he was placed in removal proceedings.

As noted above, when considering whether a request for permission to reapply warrants a favorable exercise of discretion, positive factors may include hardship to the applicant and other U.S. citizen or LPR relatives, the applicant's respect for law and order, and family responsibilities. Here, the Director determined that while the Applicant established that his spouse would suffer emotional, financial, and medical hardship in his absence, he "failed to establish that she will suffer unusual hardship." However, unusual hardship to a qualifying relative is not a requirement for permission to reapply for admission. The Director also did not specifically address evidence of additional significant positive equities in the record, including the Applicant's employment history, payment of taxes, and primary emotional and financial support to his spouse during her recent high-risk pregnancy. In light of the foregoing, we will remand the matter for the entry of a new decision.

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

[1] The regulation at 8 C.F.R. § 212.2(j) provides that an alien whose departure will execute an order of removal may, prior to leaving the United States, seek conditional approval of an application for permission to reapply for admission.