U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16258839

Date: APR. 18, 2022

Appeal of Las Vegas, Nevada 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. *See* section 212(a)(9)(A)(ii) of the Act. Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion.

The Director of the Las Vegas, Nevada Field Office denied the application, concluding that the Applicant did not establish that a favorable exercise of discretion was warranted in her case. On appeal, the Applicant does not submit any additional evidence, but asserts that the Director erred by failing to consider the totality of positive factors in her 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 dismiss the appeal because the Applicant has not met this burden.

I. LAW

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any noncitizen, other than an "arriving alien" described in section 212(a)(9)(A)(i) of the Act, 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 a noncitizen 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.

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).

Generally, favorable factors that came into existence after a noncitizen has been ordered removed from the United States, 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).

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 is inadmissible. Section 212(a)(6)(B) of the Act.

II. ANALYSIS

The Applicant is currently in the United States and seeks permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before departing the United States. The record indicates that the Applicant will become inadmissible upon departing the United States 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. We do not agree.

The record reflects that in [redacted] 2005, the Applicant was placed in removal proceedings when she attempted to enter the United States without being inspected, admitted, or paroled. She did not attend her removal proceedings and was ordered removed *in absentia* in [redacted] 2006.[1] The Applicant never departed the United States and has remained here without status since her [redacted] 2005 entry without admission or parole.

The Director denied the application for permission to reapply for admission, finding that the Applicant had not demonstrated that she merited a favorable exercise of discretion. The Director weighed the unfavorable factors including her *in absentia* removal order against her family ties, community ties, lack of criminal record, and hardships her spouse and U.S. born daughter would face if she were to be removed, and found that the favorable factors did not outweigh the unfavorable factors. The Applicant's family ties include her U.S. citizen husband, her nine-year old U.S.-born daughter, her husband's U.S.-based family (including his son, daughters, and siblings), and her sister who resides in the United States without legal status. Her community ties include regular attendance at church

[1] In addition, the Applicant will also be inadmissible for five years after departing the United States for failing to attend her removal proceedings without reasonable cause. Section 212(a)(6)(B) of the Act.

services, and her involvement in her daughter's education and schooling. We acknowledge that several letter writers voiced their concerns about how the Applicant's forced departure from the U.S. would be detrimental to their family. In particular, we carefully considered the letter from the Applicant's spouse explaining why his wife's application should be granted in the exercise of discretion. He writes that during this period of COVID-19, he worries about his family's safety if they are forced to live abroad in Nicaragua. He also explains that two of his children are enrolled in college and need his financial support, and that his youngest daughter, whom he had with the Applicant, does not speak, read, or write in the Spanish language, would have difficulty adapting to life in Nicaragua. He explains that their family in Nicaragua also depends on his financial support, and that he would be unable to continue to support them if his family lives in Nicaragua too. He explains that living in Nicaragua would present a hardship to them because he does not have a home there and his wife's family lives in substandard housing with a leaky roof. He suffers from several medical problems (hypertension, allergies, and high cholesterol) that require him to see his doctors in the United States, and in Nicaragua, he would lose the continuity of his medical care and have to pay for private health insurance, which he could not afford. Financially, he would suffer the loss of his home, employment, credit, and benefits, and his family would suffer because they depend on him. He would have difficulty finding work in Nicaragua because he does not write or read in Spanish well. Finally, he describes the Applicant in positive terms, and explains that they have been together since 2007 and married in 2015. We also acknowledge the Applicant's affidavit reiterating that her removal order resulted from her being naïve when she entered the United States. We note, however that she was approximately 30 years old at the time of her entry to the United States.

We also acknowledge the evidence regarding country conditions in the Applicant's home country of Nicaragua, which shows it is experiencing issues with crime, civil unrest, and poor infrastructure. We further acknowledge the evidence that the Applicant is a good mother who is dedicated to her daughter's education and family's well-being. Finally, we acknowledge the Applicant's spouse has titles to two cars, and car insurance and a mortgage for his home that he is paying.

In denying the application, the Director acknowledged the Applicant's family ties, good moral character, and other hardships her family would experience upon her removal to Nicaragua. However, the Director determined that these positive factors were insufficient to overcome the unfavorable factors, specifically the Applicant's entry into the United States without inspection, non-compliance with the removal order, and unlawful residence in the United States.

At the outset, we note that the Director mentioned that the Applicant had provided insufficient evidence to establish that her spouse would suffer extreme hardship because he stated he intends to move to Nicaragua in the event the Applicant is removed. However, the Director's use of the extreme hardship standard was incorrect in this context. An application for permission to reapply for admission does not require an applicant to prove "extreme hardship" to a qualifying family member. However, the Director's error is harmless because the application was ultimately denied as a matter of discretion rather than for failure to meet the extreme hardship standard of proof.

The Director's denial highlighted that the record did not contain sufficient documentary evidence to support the Applicant's financial and medical hardship claims. In arriving at that conclusion, the Director noted that the Applicant's U.S. family ties were after-acquired equities, meaning she met her husband and had her daughter after entering the United States unlawfully. The Director also concluded

that the record did not include any documentation to show that the Applicant's U.S. citizen stepson resided with her because he was not claimed as a dependent on her spouse's taxes. The Director further noted that there are several family members living in Nicaragua including the adult child of the Applicant's spouse, as well as the Applicant's parents, siblings, and a child. While the Director acknowledged sympathy for the Applicant's U.S.-born daughter who resides in the United States with her, the Director found that, overall, the Applicant and her spouse's family ties in the United States were not sufficiently strong to overcome the unfavorable factors needed to exercise positive discretion, particularly because the Applicant appears to have strong family ties in Nicaragua, as well. Finally, the Director noted that multiple household accounts submitted with the application were not held jointly by the Applicant and her spouse, which undermined the Applicant's financial hardship claims.

We agree with the Director that when viewing the totality of the circumstances, the Applicant has not established that the favorable factors in her application outweigh the unfavorable ones. Furthermore, as the Director noted, the Applicant's U.S.-based family ties were acquired after her unlawful entry to the United States. In general, favorable factors ("equities") acquired after an order of deportation, exclusion, or removal has been entered may be given less weight in assessing favorable factors in the exercise of discretion. *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. Finally, and as noted earlier, the Applicant claims to have been naïve when she failed to attend her removal proceedings, however she was approximately thirty years old when she was ordered removed *in absentia*. Therefore, a favorable exercise of discretion is not warranted, and the application will remain denied as a matter of discretion.[2]

III. CONCLUSION

The Director did not err in denying the Applicant's Form I-212, application for permission to reapply

[2] Furthermore, although the Director did not make any determination with respect to the Applicant's inadmissibility under section 212(a)(6)(B) of the Act for failing to attend her removal proceedings without reasonable cause, we note that this is a separate reason to deny her application for permission to reapply for admission because there is no waiver for section 212(a)(6)(B) inadmissibility. Although there is no statutory definition of what the term "reasonable cause" means as it is used in section 212(a)(6)(B) of the Act, guiding USCIS policy provides that "it is something not within the reasonable control of the alien." Here, the record reflects that on [redacted], 2006, the Applicant was ordered removed in absentia by an immigration judge in [redacted], Texas. On [redacted], 2016, the Applicant filed a motion to reopen her removal proceedings, which the immigration court denied. Subsequently, she filed a motion to reconsider, which was also denied by the immigration court on [redacted], 2017. The immigration court considered the Applicant's arguments relating to why she did not appear at her hearing but found that she did not demonstrate the existence of exceptional circumstances for missing her hearing. As a result, the court declined to reopen her immigration court proceedings and the Applicant's *in absentia* removal order remains in effect. Thus, once she departs, she will be inadmissibility for five years under section 212(a)(6)(B) of the Act. As such, although the Director did not deny her application for permission to reapply for admission on this basis, we nonetheless point it out because it would be a separate reason for dismissing her appeal.

An application for permission to reapply for admission is denied, in the exercise of discretion, to a noncitizen who is mandatorily inadmissible to the United States under another section of the Act. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964). Here, approving the Form I-212 would serve no purpose as the Applicant would remain inadmissible under section 212(a)(6)(B) of the Act for a period of five years. As the Applicant will become inadmissible upon her departure under section 212(a)(6)(B) of the Act, and there is no waiver available for this ground of inadmissibility, her application for permission to reapply for admission will remain denied as a matter of discretion.

for admission, as a matter of discretion. As such, the Form I-212 application for permission to reapply for admission remains denied as a matter of discretion.

ORDER: The appeal is dismissed.