U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17293049

Date: APR. 20, 2022

Appeal of Newark, New Jersey Field Office Decision

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

The Applicant, who has an outstanding removal order, seeks advance 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 Newark Field Office denied the Form I-212, concluding that the Applicant did not establish that a favorable exercise of discretion was warranted in his case.

On appeal, the Applicant claims that the Director did not properly weigh all the positive factors in his case, including hardships his U.S. citizen spouse and stepchildren would experience, and that he merits a favorable exercise of discretion.

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.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides in relevant part that any noncitizen 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 is inadmissible.

Noncitizens who are 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 contiguous 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 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.

Generally, favorable factors that came into existence after a noncitizen has been ordered 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). In addition, giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the non-citizen's possible deportation/removal is proper. *See Ghassan v. INS,* 972 F.2d 631, 634-35 (5th Cir. 1992).

II. ANALYSIS

The Applicant currently resides in the United States and he is seeking conditional approval of his application under the regulation at 8 C.F.R. § 212.2(j) before departing the United States to apply for an immigrant visa.[1] He does not contest that he will become inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure for having been previously ordered removed.[2] The only issue on appeal is whether the Applicant has demonstrated that approval of his Form I-212 is warranted as a matter of discretion. We have reviewed the entire record, including the brief submitted on appeal, and for the reasons explained below conclude that it is insufficient to establish that a favorable exercise of discretion is warranted.

The record reflects that in [redacted] 2013 the Applicant, who was 18 years old, was apprehended by U.S. border patrol agents when he entered the United States without being inspected, admitted, or paroled, and he was placed into removal proceedings. In [redacted] 2017 the Applicant married his U.S. citizen spouse, who then filed an immigrant visa petition on his behalf which was approved on March 20, 2019. On [redacted], 2019, an Immigration Judge ordered him removed to Honduras. The Applicant did not depart and continues to reside in the United States. The Applicant has two stepsons from his spouse's prior relationship, born in 2015 and 2017. In support of his application, the Applicant previously submitted evidence including his statement, his spouse's affidavit, his oldest stepson's 2019-2020 Individualized Education Program (IEP), proof of health insurance for his spouse and stepchildren, bills, letters of support from family members, proof of income and employment for the Applicant and his spouse, and information about general conditions in Honduras.

The Director denied the application as a matter of discretion. The Director acknowledged that there were favorable considerations in the Applicant's case, including his family ties in the United States, the claimed financial and emotional hardship to him, his spouse, and stepchildren, inferior economic conditions in Honduras, and his apparent lack of a criminal history. The Director found that these positive factors were insufficient to overcome the negative impact of the Applicant's unlawful entry

[1] The approval of the Form I-212 under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if the Applicant does not depart.

[2] The Applicant indicates his intention to file a Form I-601A, Application for Provisional Unlawful Presence Waiver, if the instant Form I-212 is approved.

into the United States, unlawful residence in the country, noncompliance with the removal order, and unauthorized employment.

Regarding financial hardship, the Director acknowledged that the Applicant and his spouse assert that he contributes the majority of the couple's claimed monthly household expenses of $3,000. The Applicant's statement provides that for the past six months he has earned $800 weekly as a delivery helper at [redacted] and a letter dated November 2019 from a representative of [redacted] verifies that the applicant earns $800 weekly as a helper. The spouse's affidavit indicates she earns $200 weekly as a parttime [redacted] driver, while her additional letter dated July 2019 states her weekly earnings as an [redacted] driver "are from $400-$500." The couple's amended 2018 tax return shows the Applicant earned $18,066, or approximately $361 weekly, as a self-employed maintenance worker and his spouse earned $15,283, or approximately $306 weekly. Based on the above, the Director found that the Applicant did not earn significantly more than his spouse and determined that he did not establish the extent to which his departure might impact his economic situation and that of his spouse and stepchildren.

The Director also acknowledged that the Applicant, his spouse, and stepchildren will experience emotional hardship if the Applicant must remain in Honduras for the entire inadmissibility period. Further, the Director found that, while the spouse asserted that her children would experience hardship upon relocation, relocation does not appear to be a possibility; the Applicant states it is unclear whether his stepchildren would be able to relocate because their father "shares legal custody with my wife."[3]

On appeal, the Applicant submits a brief in which he argues that the Director erred in not taking into account the totality of the circumstances in his case and asserts he is deserving of a favorable exercise of discretion when all positive and negative factors are weighed together. In addition, the Applicant emphasizes that he has no criminal history and that the letters show that he is a person of good character. After considering the record in its entirety, we agree with the Director that the evidence is insufficient to show that a favorable exercise of discretion is warranted, for the reasons explained below.

The most significant negative factors in the Applicant's case are his unlawful entry into the United States, unlawful presence in the United States, non-compliance with the removal order, and unauthorized employment.[4] The positive factors include the Applicant's family ties in the United States, payment of taxes, apparent lack of criminal history, and difficult conditions in Honduras.

We recognize that the Applicant's stepson has received specialized academic instruction; however, the record does not show that he would be unable to receive adequate educational support if the Applicant must remain abroad until his inadmissibility period expires. In addition, although the Applicant reasserts that separation would cause significant emotional hardship to his spouse and stepchildren, the evidence shows that the spouse's mother, father, sister, and grandmother live in the

[3] The spouse's statement provides that her children's father "barely spends time with them," and the IEP relates her statement that he "is not involved at this time."

[4] At the time his spouse filed an immigrant visa petition on his behalf, the Applicant indicated he had been self-employed in the United States at various jobs since September 2013.

United States and there is nothing in the record to suggest that they would be unwilling or unable to provide the Applicant's spouse and stepchildren with emotional support in his absence.[5]

The Applicant reasserts that his spouse and stepchildren will suffer severe economic hardship as they depend on his financial support. In addition, the Applicant claims that he could not provide financial support from Honduras; he claims he will have difficulty finding work in Honduras because he never previously worked there, having been a student at the time he departed the country. While we acknowledge the submission of documents about the couple's earnings and expenses indicating that the Applicant earns more than his spouse, there is nothing in the record to suggest that the spouse would not be able, in the Applicant's absence, to supplement her current income or to work full-time to meet her expenses, or that the Applicant could not provide financial support from Honduras. We also acknowledge the submitted country reports for Honduras and recognize that the Applicant may experience financial difficulties if he must remain there for the entire inadmissibility period. However, we note that members of the Applicant's family continue to live in Honduras, and the evidence submitted does not show that the Applicant, with experience as a delivery helper and maintenance worker, would be unable to find employment there.

Moreover, the documentation submitted as proof of the couple's claimed household expenses lists conflicting address information in [redacted] New Jersey, so the record does not clearly establish where and with whom the parties live and, therefore, the amount of their monthly financial obligations. For instance, in the Applicant's statement he asserts that he lives in an apartment at [redacted] Street. He submitted a lease agreement for those premises for the period from December 2019 through November 2020 listing a monthly rent of $1800; the lease indicates that the Applicant's spouse and her sister, [redacted] are the lessees and tenants/residents, and that authorized occupants of the premises include the Applicant [redacted],[6] the Applicant's stepchildren, and [redacted] In the lease, the premises owner also acknowledges "prorated rent in the sum of $929 received for 1/15/2019 – 12/01/2019 from the resident." The Applicant's gas and electric bills for December 2019 and January 2020 and his bank account statements for August 2020 and September 2020 list the [redacted] Street address. However, his stepson's IEP, dated June 2019, relates that the Applicant resides with his spouse, his stepchildren, and his spouse's parents in an apartment at [redacted] Avenue. The couple's amended 2018 tax return, the spouse's employment verification letter dated July 2019, and her car insurance bill dated June 2019 list the [redacted] Avenue address.

The record does not contain information about the financial contributions of the other persons living with the couple at either of the above addresses. Other bills dated June and September 2019 list an address of [redacted] Street, such as the spouse's bill of sale for a Dodge Caliber and car title for a Honda CRV. The documentation submitted, therefore, does not provide a complete picture of the couple's financial situation and, as such, is insufficient to establish the extent of the claimed economic hardship to the Applicant, his spouse, and stepchildren that would result from his absence. The record suggests, however, that the financial difficulties the spouse may experience in the Applicant's absence would be mitigated by the fact that she could rely on the assistance and support of family members in

[5] The appeal brief indicates that the Applicant's spouse "was with her parents between the relationships" with the father of her children and the Applicant.

[6] Based upon the statement of the Applicant's mother, it appears that [redacted] may be the Applicant's brother.

the United States with whom she indicates she is in daily contact and has claimed to reside, including her mother, father, and sister [redacted].

We recognize that there are several favorable factors in the Applicant's case, including his family ties in the United States, the emotional and financial support he provides his family, and the emotional and economic hardship he and his family will experience as a result of separation. However, we agree with the Director that such hardship has a diminished weight in the discretionary analysis, because the Applicant's family ties came into existence several years after he had been placed into removal proceedings and were therefore "after-acquired equities." We acknowledge evidence of other favorable factors in the Applicant's case, including letters attesting to his good character. This evidence, however, is insufficient to overcome the negative factors in the Applicant's case.

In conclusion, we find, upon review of the totality of the record, that the Applicant has not provided evidence sufficient to establish that the positive factors in his case (his marriage to a U.S. citizen spouse, that he has two U.S. citizen school-aged stepsons, and his lack of a criminal record), considered individually and in the aggregate, outweigh the negative factors in his case (his entry into the United States without inspection or parole in 2013, his failure to depart the country after being ordered removed, and his presence in the United States without status and unauthorized employment since 2013). A favorable exercise of discretion is, therefore, not warranted, and the Applicant's request for permission to reapply for admission to the United States remains denied.

ORDER: The appeal is dismissed.