U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17624208

Date: APR. 20, 2022

Appeal of Fort Myers, Florida Field Office Decision

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

The Applicant, who has an outstanding order of removal, 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. § l 182(a)(9)(A)(iii).

The Director of the Fort Myers, Florida Field Office denied the Form 1-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, as a matter of discretion, concluding that the favorable factors did not outweigh the unfavorable factors in the 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.

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 continuous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

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. The approval of his 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.

II. ANALYSIS

The record reflects that the Applicant first entered the United States on or about June 19, 1999, at or near [redacted] Arizona, without inspection. In [redacted] 2014, the Applicant was placed in removal proceedings for being in the United States without admission or parole and having no valid immigrant visa. In [redacted] 2016, the Applicant was granted voluntary departure. He subsequently filed a timely appeal with the Board of Immigration Appeals (Board), and in June 2017, the Board remanded the Applicant's appeal for further consideration of the Immigration Judge's order for voluntary departure. The Applicant was then ordered removed on [redacted] 2019, under INA sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i).

The Applicant asserts that, if separated from him, his U.S. citizen spouse would experience emotional and medical hardship. He states that his spouse suffers from depression, a condition which could be exacerbated by his removal. He contends that if he returns to Mexico, his spouse would be concerned for his safety in Mexico which would increase her stress level and negatively impact her health. He further asserts that his three-year-old U.S. citizen son would experience financial and emotional hardship if he is denied admission. He contends that he would also experience financial and emotional hardship resulting from his inability to adequately support his spouse and child due to Mexico's poor economy and level of poverty. In addition, he states that Mexico has a high crime rate, and he could be targeted because criminals frequently target individuals returning from the United States. For this reason, he also could not allow his spouse and child to visit him because he would be concerned for their safety. The Applicant also asserts that his U.S. citizen father would experience financial and medical hardship. He states he pays his father's utility bills and rent because his father is unable to work.[1]

In denying the application, the Director acknowledged the Applicant's family ties, including his U.S. citizen spouse, father, and son, as well as letters of support from family members residing in the United States, and the Applicant's claim that his spouse, father, and son would experience hardship upon separation. The Director determined that these positive factors were insufficient to overcome the negative impact of the Applicant's entry into the United States without inspection, unlawful residence in the United States, working without authorization and arrest history while in the United States.[2]

We have reviewed the entire record, and for the reasons explained below agree with the Director that the evidence is insufficient to show that a favorable exercise of discretion is warranted. The most significant negative factors in the Applicant's case are his unlawful presence in the United States, unauthorized employment, as well as a history of two arrests involving DUI and providing false information and documents to law enforcement officers. The positive factors include the Applicant's longtime residence and family ties in the United States, providing financial and emotional support to his family, and difficult conditions in his native Mexico.

---

[1] The record indicates the Applicant's father is 68 years old and suffers from urological issues that are being treated by medication under the advisement of a urologist.

[2] The record indicates the Applicant was arrested in [redacted] 2007 for providing false information to a law enforcement officer, providing false identification to a law enforcement officer, and not having a valid driver's license, however the Applicant did not provide final disposition documents. The Applicant was also arrested in [redacted] 2014 for DUI and no valid driver's license. The applicant submitted documentation indicating he was placed on 12 months of probation but the record does not establish whether the applicant successfully completed his probation.

We recognize that the Applicant's spouse was diagnosed with depression and may face emotional difficulties without the Applicant; however, the evidence shows that the spouse's parents and sister live in the United States and there is nothing in the record to suggest that they would be unwilling or unable to provide her with emotional support. Similarly, while the Applicant asserts that separation would cause significant emotional turmoil to his son, the record indicates his spouse is gainfully employed in a full-time job while both the Applicant and his spouse have many family members living nearby who could provide additional support. Additionally, the Applicant asserts that he has to take his father to medical appointments due to a health condition, however the record indicates the Applicant's mother and eight siblings live nearby and there is no indication in the record that they would be unwilling or unable to assist with the father's emotional, health, and financial care. Regarding the Applicant's claimed medical hardship to the Applicant's spouse, the psycho-social evaluation does not show that she has any conditions that require specialized treatment or that she would be unable to receive adequate health care if the Applicant must remain abroad until his inadmissibility period ends. The Applicant submitted a letter explaining his hardships but does not explain his history of arrests or any regrets or rehabilitation since the arrests. Thus, the Applicant has not shown that the claimed hardships to himself, his spouse, his son, or his father outweigh the negative factors in his case, or that there are additional circumstances mitigating his immigration violations or criminal history.

We acknowledge evidence of other favorable factors in the Applicant's case, including letters attesting to his good character, work ethic, payment of taxes, and information about conditions in Mexico. This evidence, however, is insufficient to overcome the adverse impact of the Applicant's immigration violations, unlawful presence in the United States since 1999, false statements to law enforcement officers, and unauthorized employment.

Consequently, we agree with the Director that the Applicant has not demonstrated that the positive factors in his case considered individually and in the aggregate outweigh the negative factors. 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.