U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17513992

Date: APR. 20, 2022

Appeal of Charlotte, North Carolina 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 (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii).

The Director of the Charlotte, North Carolina 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.

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). 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").

II. ANALYSIS

The record reflects that the Applicant first entered the United States in 2000, at or near an unknown port of entry, without inspection. In [redacted] 2016, the Applicant was placed in removal proceedings for being in the United States without admission or parole and was granted voluntary departure on [redacted] 2018. The Applicant was granted until [redacted] 2018, to voluntarily depart, and when he did not do so, the grant automatically became an order of removal. In sum, the record reflects the Applicant did not depart the United States pursuant to his grant of voluntary departure, and he has continued to reside here since 2000.

The Director denied the application as a matter of discretion, concluding that the favorable factors in the Applicant's case did not outweigh the unfavorable factors. Specifically, the Director found that the favorable factors in the Applicant's case were the Applicant's four U.S. citizen children. In evaluating the Applicant's claims with the I-212 that his U.S. citizen child would experience economic hardship in his absence, the Director determined the Applicant lived separately from his three older children, only visiting every few months, while the economic impact to the family is a typical adjustment to separation that is not enough of a hardship to warrant the application should be granted as a matter of discretion. While the Director acknowledged the Applicant's long residence in the United States, this was given less weight as the Applicant had lacked authorization to do so. Turning to unfavorable factors, the Director concluded that the Applicant had been apprehended seven times while attempting to enter the United States without inspection or parole. The Director also concluded that the Applicant then remained in the United States beyond his initial authorization, appeared to be working in the United States without authorization, and had a criminal record involving DUI, assault, and theft stemming from arrests in 2000, 2006, and 2016.

On appeal, the Applicant submits a brief arguing that the Director erred in not taking into account the totality of the circumstances and the positive and negative factors in his case. Regarding the positive factors in his case, the Applicant claims that his four U.S. citizen children will suffer economic hardship if he is denied readmission. The Applicant did not address the negative factors in the record such as any rehabilitation or remorse about his extensive immigration violations and criminal record.

After considering the record in its entirety, we do not find that the Applicant's arguments overcome the reasons for the Director's denial. We recognize that the Applicant's children may face economic difficulties without the Applicant; however, the evidence shows that of his three older children, one

has joined the military and the other two live with their mother. While the Applicant has submitted documentation of the financial support he offers his three older children, the record indicates the mother of the children as well as members of the Applicant's own family live in the area and there is no indication in the record that they would be unwilling or unable to assist with supporting these children. The Applicant claims in the record that he would need to take his youngest child, a two-year old, with him to Mexico where he fears for his safety and economic viability. However, the child's birth certificate indicates the mother was living in the United States and the Applicant did not submit any documentation indicating he has sole custody of the child or that the mother would approve the child moving to Mexico with the Applicant. Additionally, the Applicant did not submit documentation showing the financial support, if any, contributed from the child's mother while the record indicates the Applicant's close and extended family reside in the United States and there is no indication in the record that they would be unwilling or unable to assist with supporting the youngest child. Thus, the Applicant has not shown that the claimed hardships outweigh the negative factors in his case, or that there are additional circumstances mitigating his immigration violations, criminal history, and long-time unauthorized employment in the United States.

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. Here, the Applicant has not established that he merits a favorable exercise of discretion. Accordingly, the application will remain denied.

ORDER: The appeal is dismissed.