U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15802020

Date: APR. 22, 2022

Appeal of Los Angeles, California 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 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 Los Angeles, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the Applicant did not meet the "statutory threshold requirements for permission to reapply for admission into the United States after deportation or removal" and ultimately denied the application as a matter of law.[1] On appeal, the Applicant provides additional evidence and asserts that the Director's decision was made in error. 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.

On appeal, the Applicant contends that the Director 1) "applied the wrong standard of law and demanded an extreme hardship requirement that simply does not exist when requesting and I-212 Provisional Waiver," 2) "incorrectly determined that [the Applicant] sought a waiver under" section 212(a)(9)(B)(v) of the Act, and 3) erred by failing to appropriately consider and weigh the submitted evidence.[2] As explained by the Applicant, she is currently in the United States and "before seeking an unlawful presence waiver (Form 601-A)," filed the Form 1-212 on a conditional basis pursuant to the regulation at 8 C.F.R. § 212.2(j) prior to her departure.[3] As noted above, because she has an outstanding order of removal, she will be inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure from the United States.[4]

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[1] The Director's decision is unclear as to the specific "statutory threshold requirements" being referenced.

[2] Extreme hardship to a qualifying relative is not a requirement for permission to reapply for admission.

[3] Approval of the application is conditioned upon departure from the United States and would have no effect if the Applicant does not depart.

[4] The record indicates that the Applicant entered the United States in [redacted] 2002 without being inspected, admitted, or paroled and appears to have provided an incorrect year of birth when she was apprehended. On [redacted] 2003, she was granted voluntary departure from the United States on, or before, October 28, 2003. The Applicant did not depart and continues to reside in the United States.

In addition, we note that the Applicant may file a provisional waiver application, a separate application for relief, to waive her inadmissibility for unlawful presence and reenter the United States. *See* section 212(a)(9)(B)(v) of the Act. Pursuant to the regulation at 8 C.F.R. § 212.7(e)(4)(iv), an individual inadmissible under section 212(a)(9)(A) of the Act for having been ordered removed must obtain permission to reapply for admission before applying for a provisional waiver.

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, 373-74 (Reg'l Comm'r 1973). 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).

Here, we find it appropriate to remand the matter to the Director to determine whether the Applicant warrants a favorable exercise of discretion.

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