U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16631808

Date: APR. 22, 2022

Appeal of U.S. Customs and Border Protection Admissibility Review Office Decision

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

The Applicant, a citizen and resident of Canada, is inadmissible to the United States for having been previously ordered removed as an "arriving alien." *See* Section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). She has filed a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, seeking permission to reapply for admission under Section 212(a)(9)(A)(iii) of the Act.

The Director of the U.S. Customs and Border Protection (CBP) Admissibility Review Office denied the Applicant's Form I-212 application, as a matter of discretion, concluding that "the favorable factors in [her] case [were] outweighed by the unfavorable factors."

On appeal, the Applicant asserts that the Director erred because she has "presented substantial evidence of positive equities [that] clearly outweigh[] the significance of the misstatement as to the date she changed to a different [employer]." She maintains that she is eligible for the Form I-212 application.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(i) of the Act provides that any noncitizen "who has been ordered removed under [Section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1)] . . . initiated upon the [noncitizen's] arrival in the United States and who again seeks admission within 5 years of the date of such 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.

Approval of a Form I-212 application 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 a Form I-212 application 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. *See Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973); *see also Matter of Lee*, 17 I&N Dec. 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

In addition to her Form I-212, the Applicant submitted a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, to CBP seeking a waiver of her inadmissibility based on willful misrepresentation of a material fact and for lack of valid entry documents. *See* Section 212(a)(6)(C)(i), (7)(A)(i)(I) of the Act. CBP denied the Form I-192 application and the Board of Immigration Appeals (the Board) dismissed the subsequent appeal. As the Applicant is inadmissible to the United States under another section of the Act, no purpose would be served in granting the Form I-212 application in the exercise of discretion. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964). We will therefore dismiss her appeal of the denial of her Form I-212 application as a matter of discretion.

In the alternative, even if the Applicant's Form I-192 were granted, we would nonetheless dismiss the appeal of her Form I-212 application denial as a matter of discretion because she has not demonstrated that she merits such approval. The record shows that the Applicant was granted a TN nonimmigrant visa under the North American Free Trade Agreement (NAFTA), which permitted her to enter the United States to engage in business activities at a professional level. The TN nonimmigrant visa was based on the claim that she would work as a designer for [redacted]'s business [redacted]

According to the [redacted] 2018 Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, Form I-867A, which the Applicant executed, on [redacted] 2018, she presented herself for inspection at the Blaine, Washington, Pacific Highway Port of Entry. She claimed that she was seeking entry into the United States to renew her TN nonimmigrant visa. In her Record of Sworn Statement, she acknowledged that she was first granted the TN nonimmigrant visa in 2015 to work for [redacted] but that she stopped working for [redacted] in October 2017, and began working for another U.S. employer [redacted] She further admitted that for about seven months, between October 2017 and [redacted] 2018, she worked for [redacted] not [redacted] without authorization from the U.S. Department of Homeland Security (DHS). She confirmed that in October 2017, December 2017, and January 2018, she entered the United States using her TN nonimmigrant visa, but she was not then working for [redacted]

The Applicant's Record of Sworn Statement revealed that on [redacted] 2018, when she presented herself for inspection at the port of entry, she falsely stated to a CBP officer that she had stopped

working for [redacted] in [redacted] 2018. Her Record of Sworn Statement includes the following exchanges:

CBP Officer:	Did you in fact quit working for [redacted] today or were you misrepresenting your current employment?
The Applicant:	Misrepresenting my current employment.
. . . .	
CBP Officer:	Is it true that you told me you quit working for [redacted] today, because if you would have told me that you quit working for her in October 2017 I would deny you entry?
The Applicant:	Yes.
CBP Officer:	Did you willfully misrepresent yourself in order to adjust your TN status when entering the U.S.?
The Applicant:	Yes.

The record shows that CBP found the Applicant inadmissible for willful misrepresentation of a material fact and for lack of valid entry documents. *See* Section 212(a)(6)(C)(i), (7)(A)(i)(I) of the Act. CBP then issued an expedited order of removal against the Applicant under Section 235(b)(1) of the Act and escorted her back to Canada.

Upon a careful review of the record, we conclude that the Applicant has not demonstrated eligibility for the Form I-212 application. Specifically, she has not shown that the favorable factors in this case outweigh the unfavorable ones. As such, we find that approval of the application is not warranted as a matter of discretion. *See Matter of Lee*, 17 I&N Dec. at 278-79. The positive factors in this case include the Applicant's residence in the United States, her employment in the United States, and her purported hardship.[1] According to a Form G-325A, Biographic Information, the Applicant lived in the United States for approximately three years between April 2015 and May 2018. The Form G-325A also indicates that she was employed by U.S. employers as a designer for over three years between April 2015 and August 2018. In a statement the Applicant submits on appeal, she claims that she is experiencing hardship because she is "unable to practice her profession in the U.S." The statement also asserts that she "has no criminal record" or "history of repeat or serious immigration violations." We note that while the Applicant is unable to enter the United States to work, her Form G-325A

[1] The Director discussed in the decision the purported hardship on the Applicant's significant other, who lives in the United States, but ultimately concluded that the Applicant had presented "insufficient evidence . . . to show a hardship to [him] . . . in the event of an unfavorable decision on this application." On appeal, the Applicant has not specifically challenged the Director's finding as relating to this issue. Accordingly, we will not address this issue that the Applicant has not raised with specificity on appeal. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

indicates that she has been employed as a designer in Canada since September 2018, one month after she stopped working for her U.S. employer [redacted]

On appeal, the Applicant attempts to minimize the seriousness of her material misrepresentation, stating that the misrepresentation was a "misstatement as to the date she changed to a different [employer]" and a "misstatement" of "relatively minor character." She also claims that she informed a CBP officer in December 2017 that she had changed her U.S. employer, but that the CBP officer "admitted [her] without any concern" and did not give her "any instruction that she was not able to work for the new employer without a formal change of TN employer process." The Applicant, however, has not submitted any corroborating evidence about the purported disclosure in December 2017. Additionally, as reflected in the Withdrawal of Application for Admission/Consular Notification, Form I-275, when she sought entry into the United States in [redacted] 2018, she initially claimed that she stopped working for [redacted] in [redacted] 2018. Her statement in [redacted] 2018 does not support her claimed and unsubstantiated disclosure in December 2017. Regardless, the Applicant bears the burden of establishing her eligibility for any requested benefit, irrespective of what a CBP officer might have or have not communicated with her.

On appeal, the Applicant also argues that she "timely retracted [her] misstatement." An applicant is not inadmissible under Section 212(a)(6)(C)(i) of the Act if he or she timely and voluntarily retracts the fraud or misrepresentation. *See Matter of M-*, 9 I&N Dec. 118, 119 (BIA 1960) (holding that attempted fraud must be corrected "voluntarily and prior to any exposure"); *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (holding that where an alleged retraction "was not made until it appeared that the disclosure of the falsity of the statements was imminent[, it] is evident that the recantation was neither voluntary nor timely"); *see also* 8 *USCIS Policy Manual* J.3(D)(6), https://www.uscis.gov/policy-manual/volume-8-part-j-chapter-3. Here, according to the Form I-275, when seeking entry into the United States in [redacted] 2018, the Applicant presented to the CBP officer "a TN application packet for the job of interior designer for [redacted]" and she indicated "she had quit[] that job [with [redacted] as of this date ([redacted]/2018)." When she was confronted with her social media post indicating that she was working for [redacted] as of March 2018, she admitted that she began working for [redacted] in October 2017. These facts do not support a finding that she had timely and voluntarily retracted her material misrepresentation as relating to her U.S. employer prior to any exposure.

Notwithstanding the above discussed positive factors, this case includes significant negative factors. As discussed, the Applicant was removed from the United States for material misrepresentation. Specifically, she admitted in her Record of Sworn Statement that she repeatedly made misrepresentation to gain entry into the United States in 2017 and 2018. In addition, she was removed from the United States recently, in [redacted] 2018, and she filed her Form I-212 application in April 2019, less than a year after her removal. Significantly, she has not accepted full responsibility for her misrepresentation in [redacted] 2018 or for her multiple entries into the United States under false pretenses. As noted, on appeal, she attempts to minimize the gravity of her actions, calling her misrepresentation a "misstatement as to the date she changed to a different [employer]," and alleging, without corroborating evidence, that she had "timely retracted [her] misstatement." The record demonstrates that the Applicant has not accepted personal responsibility for her actions or established that she has been reformed or rehabilitated. The Applicant's employment with [redacted] without DHS authorization, her repeated entries into the United States under false pretenses, her material

misrepresentation to a CBP officer in [redacted] 2018 regarding her U.S. employment to gain entry into the United States, and her attempts to minimize the significance of her actions are serious negative factors, and they outweigh the positive ones in this case. *See Matter of Tin*, 14 I&N Dec. at 373-74.

III. CONCLUSION

As discussed, CBP denied the Applicant's Form I-192 application and the Board dismissed her subsequent appeal. As the Applicant remains inadmissible to the United States under Section 212(a)(6)(C)(i) and (7)(A)(i)(I) of the Act, no purpose would be served in granting the Form I-212 application. We will therefor dismiss her appeal of the Form I-212 application denial as a matter of discretion. *See Matter of Martinez-Torres*, 10 I&N Dec. at 776-77.

In the alternative, upon a review of the record before us, we find that the Applicant has not established she merits approval of her Form I-212 application because the favorable factors in this matter do not outweigh the unfavorable ones. We will therefore dismiss her appeal of the Form I-212 application denial as she has not demonstrated that the application should be granted in the exercise of discretion.

ORDER: The appeal is dismissed.