U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18569912

Date: APR. 25, 2022

Appeal of Brooklyn, New York 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 sections 212(a)(9)(c)(ii) and 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act).

The Director of the Brooklyn, New York Field Office denied the Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, concluding the Applicant did not establish that a favorable exercise of discretion was warranted. On appeal, the Applicant submits additional evidence emphasizing asserted favorable factors.

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 remand the matter to the Director for the entry of a new decision.

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).

Generally, favorable factors that came into existence after a noncitizen has been ordered removed from the United States, 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).

The Applicant is currently in Mexico and seeks permission to reapply for admission and does not

contest that she is inadmissible under sections 212(a)(9)(C)(i)(II) and 212(a)(9)(A)(ii) of the Act.[1] The only issue on appeal is whether the Applicant has demonstrated that approval of her Form I-212 is warranted as a matter of discretion.

In denying the application, the Director determined that the Applicant's favorable factors, specifically those related to her marriage to a U.S. citizen spouse, did not outweigh her unfavorable factors. The Director concluded that the Applicant did not provide evidence of her marriage to a U.S. citizen spouse and stated that the record did not reflect any additional favorable factors. The Director indicated that without sufficient evidence of any favorable factors, the Applicant's negative factors, namely her immigration violations, outweighed the positive factors.

On appeal, the Applicant submits additional evidence, including an affidavit from the Applicant's claimed U.S. citizen spouse; an affidavit from the Applicant; a 2008 marriage certificate from Mexico indicating the marriage of the Applicant and her asserted U.S. citizen spouse; an IRS Form 1040, U.S. Individual Income Tax Return, filed jointly by the Applicant's claimed spouse and the Applicant; as well as other evidence meant to highlight her marriage to her U.S. citizen spouse and her asserted positive factors.

In denying the application, the Director only emphasized the lack of evidence of the Applicant's marriage to her claimed U.S. citizen spouse. However, as of the date of the decision, U.S. Citizenship and Immigration Services (USCIS) records reflected that in November 2010 the Applicant had a Form I-130, Immigrant Petition for Alien Relative, approved on her behalf through her claimed U.S. citizen spouse. Further, the Applicant submits additional evidence of her marriage to her asserted U.S. citizen spouse on appeal. If the Applicant's marriage to her U.S. citizen spouse is established, the Director should review additional favorable factors in the record, including hardship to the Applicant and her U.S. citizen spouse, as well as related family responsibilities. In addition, the Applicant discusses other potential positive factors to be reviewed by the Director related to her spousal relationship, such as the need for the Applicant's services in the United States to care for her spouse due to his asserted health problems.

In light of the deficiencies noted above and considering the new evidence submitted on appeal, 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.

[1] Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen who has been ordered removed under section 240 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) if prior to the date of the re-embarkation 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 foreign national's reapplying for admission.