U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18428047

Date: APR. 25, 2022

Appeal of Detroit, Michigan Field Office Decision

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

The Applicant seeks advance 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 Detroit, Michigan Field Office denied the Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, concluding that the Applicant did not establish a favorable exercise of discretion was warranted. The Applicant later filed a motion to reopen and a motion to reconsider which were both dismissed by the Director. On appeal, the Applicant does not submit additional evidence, but asserts the Director did not take into consideration all relevant positive factors in adjudicating the application and later motions.

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 because the Applicant has not met this burden.

I. LAW

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides in relevant part that any noncitizen who has been ordered removed, or 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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of a noncitizen convicted of an aggravated felony) is inadmissible.

Noncitizens who are 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 reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

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).

II. ANALYSIS

The Applicant is currently in the United States and seeks conditional permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before he departs.[1] The Applicant does not contest that he will be inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure for having been previously ordered removed. The only issue on appeal is whether the Applicant has demonstrated that approval of his Form I-212 is warranted as a matter of discretion.

The record reflects that the Applicant, a national and citizen of Mexico, entered the United States without inspection and admission or parole in 1994. In June 1995, a Form I-130, Petition for Alien Relative, filed by the Applicant's U.S. citizen father was approved on his behalf. Thereafter, the Applicant was ordered removed in [redacted] 2006. The Applicant did not leave the country and has been residing in the United States since 1994. The Applicant filed the current I-212 application in January 2020.

The Director denied the application as a matter of discretion, concluding that the Applicant's negative factors outweighed the positive ones. The Director emphasized that the Applicant entered the United States illegally and lived and worked here contrary to U.S. immigration laws for over 25 years. The Director also disputed the Applicant's strong family ties to the United States, indicating that he had approximately eight siblings living in Mexico and that there was insufficient evidence as to which of his family members were living in the the United States. The Director also discussed the Applicant's U.S. citizen father, who the Applicant claimed was ill and required his care. The Director concluded that the Applicant did not sufficiently explain why his siblings in the United States could not provide care for his father in the event of his absence.

In addition, the Director pointed to three crimes the Applicant committed involving driving a vehicle after consuming alcohol prior to his removal order in 2006. In sum, the Director concluded that the Applicant's illegal entry and employment, his failure to depart after the removal order, and his criminal record, indicated that he had failed to abide by the laws of the United States. The Director determined that these negative factors outweighed the positive factors discussed by the Applicant.

[1] The approval of the Form I-212 under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if he failed to depart.

As noted, the Applicant later filed a motion to reopen and a motion to reconsider with the Director. The Applicant contended the Director acted improperly in overemphasizing his stay in the United States after the order of removal, stating that the Form I-212 application acts as an exception to such immigration violations. The Applicant also asserted that his criminal convictions should be given less weight since they occurred prior to his order of removal. He further emphasized that he had complied with the penalties assessed for these crimes and that no further convictions had occurred in more than 14 years. The Applicant also clarified that he did not have three alcohol related offenses, but only two, the third being a conviction related to driving without a license.

The Applicant further emphasized that the removal order is not recent, being issued in 2006, and asserts that he stayed in the United States based on the Form I-130 approved on his behalf, noting that he believed he would adjust to permanent residency during this time. The Applicant also pointed to the need for his services in the United States as a caretaker to his ill U.S. citizen father and medical documentation showing his father's history with seizures, strokes, and diabetes. The Applicant contended that it was improper for the Director to conclude that he did not have strong family ties to the United States, simply because he has several siblings living in Mexico. He further indicated that these siblings, both in the U.S. and abroad, show no willingness to care for his ailing father.

The Director dismissed the motion to reopen and the motion to reconsider. The Director stated that the Applicant's contentions as to the positive and negative factors did not amount to new facts to support a motion to reopen. The Director again pointed to the Applicant's immigration violations and his criminal history as substantial negative factors. The Director further indicated that the Applicant did not articulate why his siblings in the United States, a few of which who had received approved Forms I-130 through his father, could not care for him in the Applicant's absence. The Director also determined that there was no legal basis for the Applicant's assertion that his criminal history occurring prior to the removal order should be given less negative weight, nor him legally awaiting adjustment to a permanent resident in the United States. On appeal, the Applicant reiterates the same contentions he provided in support of the prior motions.

We have reviewed the entire record, and for the reasons explained below, we 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 substantial unlawful presence in the United States after the removal order, apparent unauthorized employment since 1994, and criminal violations while residing here. The positive factors include the Applicant's longtime residence and family ties in the United States, his assertion that he is an active and upstanding member of his community, and the need for his services to be a caretaker to his ill U.S. citizen father.

As an initial matter, although we recognize that the Applicant's U.S. citizen father could be negatively impacted by the absence of the Applicant, the Applicant has not sufficiently documented the need for his services in the United States. The Applicant submitted limited documentation to substantiate his father's medical condition and the nature of, and need for, the Applicant's care. For instance, the Applicant provided one summary from his father's visit to a doctor indicating that his father takes several medications, including those to treat diabetes, "stroke-like symptoms," dizziness, high cholesterol, and his prostate. Further, this document included a health "problem list" reflecting that he suffers from stroke-like symptoms, type-2 diabetes, hypertension, benign prostatic hyperplasia,

dizziness, tremors, among other conditions.

However, the submitted evidence does not specify the level of care the Applicant's father requires. For example, the Applicant's father only stated that his son is "the one who takes me to the doctor [and] the one who holds money when I run out of what I have." The record includes no indication how often the Applicant takes his father to the doctor or what other specific care he provides. The father's statement also indicates that he lives with the Applicant and his wife, therefore, it is not clear why the Applicant's wife, or other relatives, could not take the Applicant's father to the doctor or otherwise provide occasional financial support. Likewise, there is little documentation to establish the Applicant's father's financial situation, such as his income, or how much financial support the Applicant provides him. Further, although the Applicant contends on appeal that his siblings are not willing to care for or support his father, he does not sufficiently explain why they are unwilling or unable to care for their father, or why they would not fill in and provide support in the Applicant's absence.[2]

In addition, the Applicant's father stated that his son "supports his family, his wife and his girls." Although this suggests that the Applicant has certain family responsibilities in the United States, the record includes no explanation of his family, nor does it detail any hardship his absence may cause them. Therefore, in sum, the Applicant has not sufficiently established the need for his services in the United States, the hardship his absence would cause, or his family ties in this country.

In contrast, the record includes evidence of questionable moral character and a lack of respect for law and order on the part of the Applicant. The Applicant submits his criminal record reflecting that he was arrested and convicted of crimes three times while illegally present in the United States, including for driving while intoxicated in 2002, reckless driving in 2004,[3] and driving without a license in 2004. The Applicant states on appeal that he has not been arrested for the last fourteen years. However, he provides no details related to his prior convictions, nor does he express remorse for them or indicate how he has been reformed or rehabilitated. The Applicant also was evasive regarding the details of these incidents in his removal proceedings, stating to the judge that "he had not been charged" related to one incident and that "nothing was proven" with respect to another, despite his documented arrests and convictions. Here, the Applicant does not specifically describe these incidents to fully ascertain their seriousness, nor does he explain how he has been reformed or rehabilitated. The Applicant has also violated immigration laws since he entered illegally in 1994, or for approximately 25 years, and worked illegally this entire time. Therefore, the record includes clear evidence of compelling negative factors.

On appeal, the Applicant contends that his prior arrests should be given less weight since they occurred prior to his removal order. However, as noted by the Director, there is no basis in law or policy to support this assertion, and as we have discussed above, they are negative equities that must be considered. Likewise, the Applicant asserts that his illegal presence in the United States should be excused since he was awaiting adjustment of status after his approved Form I-130 in 1995. This contention ignores the Applicant's illegal entry and his illegal employment for more than 25 years. Further, there is no basis in law or policy to minimize illegal presence in this country as a negative

[2] As noted by the Director, U.S. Citizenship and Immigration Services (USCIS) records indicate that four of the Applicant's siblings have had Forms I-130 approved on their behalf through the Applicant's father.

[3] The criminal record further reflects that the arrest related to this conviction was for driving while intoxicated in 2003.

factor because a noncitizen is awaiting adjustment of status.

We acknowledge evidence of favorable factors in the Applicant's case, including the potential hardship his absence would cause his U.S. citizen father or his family, the length of time he has spent in this country, and the time that has passed since his removal order. However, this evidence is insufficient to overcome the adverse impact of the Applicant's three prior arrests, the lack of detail and evidence as to how he has been reformed or rehabilitated, his unlawful presence in the United States since 1994, and his unauthorized employment during this entire time.

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. As such, the Director properly dismissed the Applicant's prior motion to reopen and motion to reconsider since a favorable exercise of discretion was not warranted. The Applicant's request for permission to reapply for admission to the United States remains denied.

ORDER: The appeal is dismissed.