U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16673485

Date: APR. 26, 2022

Appeal of Dallas, Texas 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 Dallas, Texas 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 was also inadmissible under section 212(a)(9)(C) of the Act, for having reentered the United States without inspection after being ordered removed and not remaining outside of the United States for 10 years as required by the Act. On appeal, the Applicant maintains that he reentered the United States without inspection prior to April 1, 1997, and therefore he is not inadmissible under section 212(a)(9)(C) of the Act.

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.

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 deported or 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 reappply 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.

Section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than 1 year, or has been

ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible. For purpose of inadmissibility determinations, section 212(a)(9)(C)(i) of the Act applies to those who enter or attempt to enter the United States unlawfully any time on or after the effective date of the amendment enacting this section, which is April 1, 1997. Noncitizens found inadmissible under section 212(a)(9)(C)(i) of the Act may seek permission to reapply for admission under section 212(a)(9)(C)(ii), which provides that inadmissibility shall not apply to a noncitizen seeking admission more than ten years after the date of last departure from the United States if, prior to the reembarkation at a place outside the United States or attempt to be readmitted from a 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 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 (Reg'l Comm'r 1973).

II. ANALYSIS

The record reflects that the Applicant entered the United States without inspection in November 1988, was apprehended by immigration officials in [redacted] 1996, and deported to Mexico in [redacted] 1996. The Applicant asserts that he reentered the United States in November 1996 without being admitted or paroled, and has resided here since that time.[1] He is seeking conditional approval of the Form I-212 application under the regulation at 8 C.F.R. § 212.2(j) before he departs the United States, as he will be inadmissible under section 212(a)(9)(A)(ii) of the Act upon his departure due to his prior deportation order.

The Director denied the Form I-212, concluding that the Applicant was "statutorily inadmissible under INA section 212(a)(9)(C)(i)(II). . . . In consideration that any approval would serve no purpose, your application is hereby denied as a matter of discretion." However, the Applicant argues correctly on appeal that inadmissibility under section 212(a)(9)(C)(i)(II) of the Act "does not apply if the alien returned to the United States prior to April 1, 1997." In this case, the Applicant asserts that he reentered the United States "without inspection" in November 1996 and the Director has not challenged that information. Accordingly, the Director's decision erred in concluding that the Applicant is inadmissible under 212(a)(9)(C)(i)(II) of the Act.

We therefore find it appropriate to remand the matter to the Director to determine whether the Applicant merits permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act as a matter of discretion. While the Director's decision listed the favorable and unfavorable factors, the decision did not explain the relative decisional weight given to each negative and positive factor, or explain the cumulative weight given to the negative and positive factors. *See 1 USCIS Policy Manual*

[1] The Director's decision does not contest the Applicant's claimed November 1996 reentry date.

E.8(D), (providing, as guidance, the requirements for "Denying Benefit Requests as a Matter of Discretion"). Furthermore, the Director's decision did not address the Applicant's arrest and conviction record as a negative factor.[2]

Because the Applicant is eligible to apply for a conditional Form I-212 prior to his departure under section 212(a)(9)(A)(iii) of the Act, we are remanding the matter for the Director to weigh the positive and negative factors in the Applicant's case (including his criminal history) and evaluate whether he merits permission to reapply for admission as 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.

[2] For example, the Applicant was arrested for petty theft in 1993, tampering with government record in 1995, and theft stolen property in 2005.