



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 19306922

Date: APR. 26, 2022

Appeal of New York City, New York 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 New York City, New York Field Office denied the Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, as a matter of discretion, concluding that the favorable factors did not outweigh the unfavorable factors in the case. On appeal, the Applicant submits additional documents and asserts that the Director erred by failing to consider the totality of positive factors in her case.

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 sustain the appeal.

I. LAW

Section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), provides that any "arriving alien . . . who has been ordered removed under section 235(b)(1) [of the Act, 8 U.S.C. § 1225(b)(1),] or at the end of proceedings under section 240 [of the Act, 8 U.S.C. § 1229a,] initiated upon the arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

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).

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 she departs.¹ She does not contest that she will be inadmissible under section 212(a)(9)(A)(i) 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 her Form I-212 is warranted as a matter of discretion.

The record reflects that the Applicant, a national and citizen of Guyana, arrived in the United States on August 7, 2002, as a passenger transiting without a visa with an itinerary to carry her onward to the Bahamas. The Applicant did not board the onward flight from Miami to the Bahamas and instead was presented to immigration and requested asylum in the United States. On [REDACTED] 2006, an immigration judge denied her asylum claim, determined that she was inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Act, and ordered her removed from the United States. The Applicant subsequently filed an appeal with the Board of Immigration Appeals (the Board), and on July 18, 2007, the Board dismissed the Applicant's appeal and found that she had not established eligibility for asylum or for withholding of removal. The Applicant did not depart and has been residing in the United States since that time. In April 2012, the Applicant's U.S. citizen parent filed Form I-130, Petition for Alien Relative, on her behalf, which was approved in October 2014.

In support of the instant Form I-212, the Applicant submitted statements from family members; her mother's medical records; a proxy appointing the Applicant as her mother's health care agent; her mother's bank statements and Social Security information; the Applicant's Social Security earnings record from 2004 until 2018; employment authorization cards and academic records for the Applicant's two children in the United States; a 2018 Guyana travel advisory from the U.S. Department of State; and country information for Guyana. In denying the application, the Director acknowledged the favorable considerations in the Applicant's case, including hardship to her U.S. citizen mother, her family ties in the United States, her Social Security earnings record, declarations from the Applicant's family members, and difficult country conditions in Guyana. The Director determined, however, that these positive factors were insufficient to overcome the negative impact of the Applicant's initial ground of inadmissibility for not possessing a valid entry document, her longtime unlawful residence in the United States and noncompliance with the immigration judge's removal order, and her "more than 15 years" of unauthorized employment after July 2005. The Director's decision also stated that the Applicant "entered the United States on or around August 7, 2002 without admission or inspection" and that she had not provided proof of filing U.S. income tax returns during the years noted on her Social Security earnings record.

On appeal, the Applicant asserts that the Director incorrectly determined that she entered the United States without inspection (EWI) in August 2002 and that she did not file U.S. income tax returns. Regarding the EWI issue, the Applicant indicates that she arrived in the United States through the "Transit without Visa Program" and that her August 2002 "Notice to Appear" identifies her as "an arriving alien" rather than as an "alien present in the United States who has not been admitted or paroled." The record supports this conclusion. Accordingly, the Director's statement that the Applicant "entered the United States . . . without admission or inspection" is withdrawn. With respect

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 she failed to depart.

to the issue of the Applicant's U.S. income tax returns, the appellate submission includes copies of her tax returns for 2006 until 2019. We therefore withdraw the Director's determination that the Applicant's failure to offer proof of filing her income tax returns did "not establish good moral character in [her] favor."

The Applicant also contends that the Director did not properly address all pertinent favorable factors, explain the relative decisional weight given to each negative and positive factor, or explain the cumulative weight given to the negative and positive factors and the reason for the decision outcome. As stated above, we must weigh any unfavorable factors against the favorable factors to determine if approval of the application is warranted as a matter of discretion. In the present matter, the Applicant has lived in the United States for almost 20 years, has no apparent criminal history, and has worked to support herself and her family. The Applicant is the primary caregiver for her U.S. citizen mother (age 80) who suffers from Alzheimer's disease and who is unable to function in her day-to-day activities.² The Applicant also has two children in the United States who she has supported financially and emotionally since their arrival in our country.³ In addition, the Applicant has submitted documentation establishing her employment in the United States as a home health aide.⁴ Furthermore, she provided information showing unfavorable country conditions in Guyana.

The unfavorable factors in this case are the Applicant not possessing a valid entry document upon her arrival in the United States in August 2002, her longtime unlawful residence in the United States and noncompliance with the immigration judge's removal order, and her unauthorized employment after July 2005. The significant positive equities in the record include the claimed hardship to the Applicant's U.S. citizen mother if the Applicant is unable to obtain permission to reapply for admission into the United States, her family responsibilities relating to her mother and two children, the Applicant's employment and payment of taxes, the need for the Applicant's services as a home health aide for the elderly, her apparent lack of a criminal record, and the unfavorable country conditions in Guyana. We conclude that the aforementioned equities are sufficiently meritorious to overcome the negative impact of the Applicant's immigration violations.

As the record supports a finding that the balancing of the positive equities in this case against the negative factors warrants a favorable exercise of discretion, the Applicant's request for permission to reapply for admission merits approval, and we withdraw the Director's decision.

² The record includes an affidavit from the Applicant's mother asserting that she lives with Applicant and that the Applicant "bathes me, dresses me, prepares my meals, and escorts me to and from all of my medical appointments" The Applicant also submitted medical records stating that her mother suffers from Alzheimer's disease, hypertension, shortness of breath, and obesity. In addition, the medical records indicate that the Applicant attends her mother's healthcare appointments and is responsible for making "any and all health care decisions."

³ The record includes a declaration from the Applicant's two children stating: "[O]ur mother has worked night and day including weekends to put us through school and give us the things we need to complete our higher education. . . . Our mom also takes care of our grandmother who is suffering from Alzheimer's disease. Her dedication to us and our grandmother is an inspiration to all." The Applicant also provided academic records relating to her children's college studies.

⁴ The record includes the Applicant's Social Security earnings record and U.S. income tax returns. The Applicant also submitted an affidavit stating: "During the night hours and on weekends, I care for a 97-year-old U.S. citizen woman [redacted] . . . [redacted]'s children depended on me to care for their mother in the COVID-19 pandemic as they could not." The Applicant further asserted: "I also clean apartments in my neighborhood. . . . I also cleaned many apartments to rid them of COVID-19 after their occupants went to the hospital and died. Please consider my service to this country"

ORDER: The appeal is sustained.