U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17016776

Date: APR. 26, 2022

Appeal of Lawrence, Massachusetts 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 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 Lawrence, Massachusetts 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 evidence and asserts that "the positive factors in his case outweigh any negative 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 dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act 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] He 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 Kenya, entered the United States as an F-1 student in August 2003 and did not maintain his nonimmigrant status. In [redacted] 2006, the Applicant was apprehended by immigration authorities, placed in removal proceedings, and granted voluntary departure until [redacted] 2006, with an alternate order of removal to Kenya. Because he did not voluntarily depart, the grant automatically became an order of deportation. The Applicant did not leave and has been residing in the United States since that time. In 2015, he married a U.S. citizen who subsequently filed a Form I-130, Petition for Alien Relative, on his behalf, which was approved in September 2020.[2]

In support of the Form I-212, the Applicant submitted statements from himself and his spouse; his spouse's Bachelor of Science degree; an employment confirmation letter for his spouse; financial statements; a monthly expense chart; medical records for his spouse; and information about country conditions in Kenya. The Director acknowledged that there were favorable considerations in the Applicant's case, including his family ties in the United States, property ownership with his U.S. citizen spouse, and difficult conditions in Kenya.

The Director determined, however, that these positive factors were insufficient to overcome the negative impact of the Applicant's failure to maintain lawful nonimmigrant student status, criminal conviction in 2006 for disorderly conduct, noncompliance with his voluntary departure grant and removal order, and unlawful residence in the United States. The denial highlighted that the record did not contain sufficient documentary evidence to support the claim of financial and medical hardship. For example, regarding medical hardship, the Director noted that while the Applicant's spouse has been diagnosed with and treated for uterine fibroids in the United States, the record did not indicate that she planned to relocate with him to Kenya or that she would be unable to receive medical care for

[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.

[2] The record indicates that the couple had a U.S. citizen daughter together in [redacted] 2017.

her condition in Kenya. With respect to financial hardship, the Director stated that the Applicant's spouse's income (over $145,000 annually) was sufficient to cover both household expenses and childcare.

With the appeal, the Applicant provides an affidavit from himself, letters of support from two friends attesting to his relationship with his family, birth certificates for the Applicant and his spouse's three U.S. citizen daughters (including twins born in [redacted] 2020), and photographs with family and friends. He also submits medical records indicating that the couple's eldest daughter was diagnosed with anemia and speech delay at her 3-year-old wellness visit, and documentation stating that [redacted] Public Schools is proposing to conduct a speech and language developmental assessment for their eldest daughter at the parents' request. In addition, the Applicant presented medical records for the twins indicating that they were breech presentation; born prematurely at 37 weeks; and treated for neonatal jaundice, transitory tachypnea of newborn, and umbilical hernia.[3] The appellate submission further includes a list of three daycare centers in [redacted] and their respective cost, an employee confirmation letter from the Applicant's spouse's employer, a letter from her employer noting that she was placed on maternity leave from [redacted] 2020 until January 2021, recent pay statements for the Applicant's spouse, and her academic degrees and practical nursing certificate. The Applicant also presents a Quitclaim deed indicating that his spouse is sole owner of their residence at [redacted] Drive, additional deeds for two rental properties that they co-own, tax records, billing statements, and the Applicant's April 2020 acceptance letter into the Practical Nursing Education Program at [redacted] Community College.

In his affidavit, the Applicant states that he "did not leave when granted voluntary departure because at that time I was living with my uncle and I did not have the funds to leave. I was not able to buy a ticket and didn't know what to do with my belongings in Minnesota. I also wanted to stay to complete my studies . . . ." He explains that he and his spouse bought two rental properties and that he handles the property management responsibilities. In addition, the Applicant indicates that he "cares for the children because this eliminates the need for daycare services," performs the household chores, and accompanies his spouse to the children's pediatrician appointments. He asserts that his eldest daughter requires special care and that he and his spouse do not feel comfortable leaving her in the company of another person. The Applicant further contends that his "future goal is to continue with my studies to achieve a doctorate in nursing. I hope that when I graduate, I will be able to contribute financially in order to lessen [his spouse's] workload." He notes that he has "only had one incident with law enforcement for disorderly conduct, which was 14 years ago. Since that incident, I have not had any run-ins with the law and have tried to be a good person."

The record also includes an affidavit from the Applicant's spouse discussing their relationship and the emotional support he provides her, his management of the household, and his involvement with their eldest daughter. She notes that the Applicant cares for their daughter during her working hours and that his absence would affect their family emotionally, physically, and financially. In addition to his spouse's affidavit, the record includes two letters of support from their friends attesting to the Applicant's dedication to his family.

[3] The record contains medical information relating to breech births, transient tachypnea of the newborn, and umbilical hernia, but the Applicant has not shown that these temporary conditions have affected either twin's long-term health.

The Applicant asserts on appeal that the favorable factors in his case substantially outweigh any unfavorable factors. He contends that the favorable factors in his case include close family ties to his U.S. citizen spouse and three U.S. citizen daughters; hardship to his spouse, children, and himself; his reformation and rehabilitation; his length of presence in the United States and lawful entry; and his likelihood of becoming a lawful permanent resident in the near future. He also argues that he has respect for law and order, good moral character, and family responsibilities.

We have reviewed the entire record, and for the reasons explained below, 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 failure to maintain lawful nonimmigrant student status, criminal conviction in 2006 for disorderly conduct, noncompliance with his voluntary departure grant and removal order, and unlawful residence in the United States. The positive factors include the Applicant's longtime U.S. residence, family ties in the United States, financial and emotional hardship to his family and himself, and difficult conditions in his native Kenya.

While there is no dispute that the Applicant's family in the United States will be negatively affected if he must remain abroad for the entire inadmissibility period, any hardships to the Applicant's spouse and children have diminished weight in the discretionary analysis because his marriage and the birth of his children occurred after he was ordered removed in 2006. Further, the Applicant has not shown that his spouse is unable to provide financial and emotional support to their children. We recognize that the Applicant's eldest daughter was diagnosed with speech delay at her 3-year-old wellness visit and that she may face difficulties without the Applicant; however, the evidence does not show the inability of his spouse to provide proper care for their daughter or to enroll her in special education services. Furthermore, there is nothing in the record to suggest that the spouse would not be able to continue her current employment, make other arrangements for childcare, or otherwise supplement her income in the Applicant's absence.[4] Regarding the claimed medical hardship to the Applicant's spouse, her health records do not indicate that that her fibroids prevent her from working or carrying out other daily activities, or that she requires the Applicant's assistance due to her condition. Nor does the evidence indicate that she would be unable to receive adequate health care if the Applicant must remain abroad until his inadmissibility period expires.

We acknowledge the country information for Kenya and recognize that the Applicant may experience emotional and financial difficulties if he must remain there for the entire inadmissibility period. However, we note that the Applicant lived in Kenya until he was 20 years old, and that his mother and siblings continue to live there. Furthermore, although the Applicant claims that he has not had any run-ins with the law in the last 14 years and has tried to be a good person, he has not provided sufficient evidence to show his rehabilitation of character.[5]

We recognize that there are several favorable factors in the Applicant's case, including his family ties in the United States, the emotional support he provides his family, the hardship he and his family will experience as a result of separation, the length of his presence in the United States, and the approved Form I-130 filed on his behalf. However, the approved Form I-130 and the claimed medical,

[4] While the Applicant provided billing statements showing the family's monthly expenses, the record does not indicate the amount of monthly income received from the couple's two rental properties.

[5] For example, the record does not include a police clearance certificate or statement from another government authority indicating that he has no criminal record in the localities he resided during the last 14 years.

emotional, and economic hardship to the Applicant's spouse and children that would result from his absence have diminished weight in the discretionary analysis, because the Applicant's marital relationship, children, and related equities, including the purchase of the family home and rental properties, came into existence after he had been ordered removed. This evidence is insufficient to overcome the adverse impact of the Applicant's failure to maintain lawful nonimmigrant student status, criminal conviction in 2006 for disorderly conduct, noncompliance with his voluntary departure grant and removal order, and period of unlawful residence in the United States.

Consequently, we agree with the Director that the positive factors considered individually and in the aggregate do not outweigh the negative factors. A favorable exercise of discretion is therefore not warranted, and the Applicant's request for permission to reapply for admission to the United States remains denied.

ORDER: The appeal is dismissed.