U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16154636

Date: APR. 26, 2022

Appeal of U.S. Customs and Border Protection Admissibility Review 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 section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), for having been previously ordered removed. Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion.

The Director of the U.S. Customs and Border Protection (CBP) Admissibility Review Office denied the Form I-212, Application for Permission to Reapply for Admission, concluding the Applicant did not establish that a favorable exercise of discretion was warranted in her case. On appeal, the Applicant contends the Director erred in not considering all of the evidence and in finding that the unfavorable factors in her case outweighed the favorable factors. We review the questions raised in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for further proceedings.

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, 373-74 (Reg'l Comm'r 1973). The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

The record indicates that the Applicant was found inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Act and removed on [redacted] 2019. Her "Notice and Order of Expedited Removal" stated: "You admitted your intent to continue living with your husband and acknowledged you were admitted as a B-2 on 06/09/2016 until 06/08/2017 and overstayed until 02/10/2018." In denying the application, the Director acknowledged the Applicant's spouse's presence in the United States and noted that the Applicant submitted "two character reference letters" and a "personal statement," but concluded that

her favorable factors did not outweigh the unfavorable factors.[1] The Director indicated that the unfavorable factors included the recency of the Applicant's removal, her immigration violations, the absence of remorse for her actions, insufficient evidence of hardships to the Applicant and others, and the lack of a need for her services in the United States.[2]

On appeal, the Applicant contends the Director erred by not considering much of her previously submitted favorable evidence, including a letter from the Royal Canadian Mounted Police indicating that she has no criminal record, her Certificate of Canadian citizenship, documentation relating to her ties to her spouse, her sponsorship of her spouse's planned immigration to Canada, pay stubs reflecting her full-time employment, and her income tax forms. She asserts that she and her spouse were married in 2015 and that the Director ignored the hardship they would face if she were unable to visit the United States to maintain their relationship. The Director's denial notice did not address whether the aforementioned information and evidence were sufficient to outweigh the unfavorable factors.

In light of the above, we find it appropriate to remand the matter to the Director to reevaluate the submitted evidence and 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] In her personal statement, the Applicant asserted: "It was never my intention to violate U.S. immigration laws . . . . I am not a danger to U.S. society, I am a law-abiding citizen. I only wish to visit with my husband; in time he will have a proper visa to reside with me in Canada. Presently, I pray for permission to re-enter the U.S. in order to be reunited with my husband."

[2] In discussing the Applicant's immigration violations, the Director stated: "Your immigration violations include electing to remain in the United States beyond your lawful period of admission. You then continued your pattern of violations by unlawfully residing in the United States with your husband who was at that time awaiting a determination on his claim for asylum. Finally, it is particularly egregious that when you were being ordered removed from the United States, you exploited the United States asylum process by claiming fear of being returned to Canada. Your actions triggered the diversion of precious and limited resources from a system established to shelter and protect the global refugee population."