U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15944622

Date: APR. 27, 2022

Appeal of New York, New York Field 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), because he will be inadmissible upon departing from the United States for having been previously ordered removed. *See* section 212(a)(9)(A)(ii) of the Act.

The Director of the New York, New York Field Office denied the Form 1-212 as a matter of discretion, concluding that favorable factors did not outweigh the unfavorable factors in the case.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will remand the matter for the entry of a new decision consistent with our analysis below.

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 record reflects that the Applicant was ordered removed in 1994. The Applicant in this matter is seeking conditional approval of his application under the regulation at 8 C.F.R. § 212.2(j)[1] before departing from the United States to seek an immigrant visa at a U.S. consulate abroad, as he will be inadmissible upon his departure under section 212(a)(9)(A)(ii) of the Act. On appeal, the Applicant contends that the Director erred by failing to appropriately consider and weigh the submitted evidence. He also provides additional documentation regarding his mother's mental and physical health since

[1] The regulation at 8 C.F.R. § 212.2(j) provides that an alien whose departure will execute an order of removal may, prior to leaving the United States, seek conditional approval of an application for permission to reapply for admission.

the filing the Form I-212, as well as affidavits from himself, his daughter and siblings regarding hardships should his application remain denied. The issue on appeal is whether the Applicant has established that he merits conditional approval of his application for permission to reapply for admission in the exercise of discretion.

In denying the Applicant's Form I-212, the Director listed some of the favorable and unfavorable factors to be considered in a discretionary analysis included in the Form I-212 instructions.[2] She determined that the positive factors in the Applicant's case included his lack of a criminal record, his 26 years of presence in the United States, his payment of taxes to the federal government, and his responsibilities as a financial provider for his family (including his mother in the United States and daughter in Ecuador), and for his role as his mother's caregiver. The Director also noted the Applicant's extended family ties in the United States and the information about country conditions in his country of origin, Ecuador. She also discussed unfavorable factors in the Applicant's case including his entry into the United States without inspection or parole; emphasizing that the Applicant's failure to appear at his deportation hearing and remaining in the United States after being ordered deported by an immigration judge showed a disregard for the U.S. legal system, which was compounded by not appearing for his deportation when ordered to do so.

The Director ultimately concluded that the submitted evidence did not show that his mother and siblings would suffer "extreme hardship" in his absence and denied the application as a matter of discretion. While hardship is a factor that we consider when exercising discretion, an applicant is not required to show extreme hardship in the context of an application for permission to reapply for admission. Extreme hardship to a qualifying relative is a requirement for inadmissibility waivers under sections 212(a)(9)(B)(v), 212(h), and 212(i) of the Act. Here, the Director repeatedly stated that evidence in the record did not establish extreme hardship.

As the Director's decision does not reflect a proper analysis of the favorable and unfavorable factors in the Applicant's case, as required, we will remand the matter for the entry of a new decision regarding the Applicant's eligibility.

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] *See* Instructions for Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, https://www.uscis.gov/i-212.