U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15947026

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 I-212 application, concluding that the Applicant did not establish that a favorable exercise of discretion was warranted in his case. On appeal, the Applicant asserts that the Director erred in denying the application. The Applicant bears the 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.[1]

The Applicant is currently in the United States and seeks permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before departing the United States.[2] The Applicant's U.S. citizen son filed a Form I-130 immigrant petition on the Applicant's behalf, which was approved. He may depart the United States in order to apply for an immigrant visa with the U.S. Department of State. Because he has an outstanding order of removal, he will be inadmissible under section 212(a)(9)(A)(ii) of the Act once he departs.[3]

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[1] We decline the Applicant's request for oral argument. 8 C.F.R. § 103.3(b).

[2] The approval of his application is conditioned upon departure from the United States and would have no effect if the Applicant does not depart.

[3] The record indicates that the Applicant entered the United States in August 1993 without being inspected, admitted, or paroled. Later, he filed an application requesting asylum which was denied in 2001 by an Immigration Judge, who granted him voluntary departure from the United States until [redacted], 2002. The Applicant appealed this decision to the Board of Immigration Appeals (BIA), which dismissed the appeal in [redacted] 2003, ordering the Applicant removed, but granting him 30 days to depart the United States. In 2009, the Applicant was apprehended and detained by Immigration and Customs Enforcement (ICE). ICE issued an order of supervision in [redacted] 2009 and released him from custody as he lacked documentation from the Bangladesh government sufficient to carry out his removal from the United States. The Applicant filed a petition for review with a stay of removal with the Second Circuit Court of the United States, which the court dismissed in July 2010. In 2019, ICE obtained the documents required to remove the Applicant and detained him. The Applicant subsequently pursued legal remedies, to include seeking to reverse previous adverse determinations made in his

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 Director determined that the Applicant's favorable factors did not outweigh the unfavorable factors and denied the application as a matter of discretion. She indicated that she "carefully considered the evidence presented and weighed the favorable and unfavorable factors," in the application, concluding that the Applicant's "inadmissibility and other negative factors outweigh the favorable factors [he] acquired after the removal order was entered against [him] on April 21, 2006."[4]

However, we conclude that the Director does not sufficiently explain the basis for denying the application. When denying an application, the Director must fully explain the reasons for denial to allow the Applicant a fair opportunity to contest the decision and provide us an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). The regulation at 8 C.F.R. § 103.3(a)(1)(i) states that when denying an application, the Director shall explain in writing the specific reasons for denial.

We first observe that the Director erred by indicating that the Form I-212 instructions include "*unusual* hardship to U.S. citizen or lawful permanent resident relatives, yourself, or your employer" as a factor to consider when weighing the equities in a Form I-212 application. (Emphasis added). The instructions to Form I-212 do not list "*unusual* hardship to U.S. citizen [] relatives…," rather the instructions simply indicate that hardships to these individuals will be considered as favorable factors within the Form I-212 discretionary analysis.[5]

Further, while the Director stated that the Applicant presented evidence of "unusual hardship" to himself, his spouse and U.S. citizen children; his good moral character, the maintenance of family unity, and country conditions in Bangladesh, she did not identify or specifically discuss any of the evidence submitted in support of the application. The Director also did not acknowledge other evidence of significant favorable factors in the record. For example, the Applicant, who has lived in the United States for many years, has been subject to ICE's order of supervision for at least a decade, and has facially complied with ICE's terms and conditions for supervised release from custody, to include checking in with ICE personnel when directed to do so. He lacks a criminal record, has paid taxes to the federal government, and has applied for work authorization with USCIS in order to avoid

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asylum and removal proceedings in various federal courts, which we will not detail here for the sake of brevity. The Applicant was released from custody and is currently subject to an ICE order of supervision. His final order of removal remains in effect; he did not depart and continues to reside in the United States.

[4] We observe that the Applicant was issued a final removal order in [redacted] 2003, not in April 2006.

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

further unlawful employment in the United States. These are favorable factors which may be considered when contemplating whether the Applicant has respect for law and order, his good moral character, and also whether he has reformed or rehabilitated since his prior immigration violations.

The Director should weigh the factors and clearly explain why the Applicant does not qualify for the conditional Form I-212 waiver, including why the documents in the record do not establish eligibility. Therefore, we remand the application to the Director to weigh the favorable and unfavorable factors based upon the evidence in this particular case and explain the basis of her determination so that the Applicant more fully understands the Director's concerns.

The Director may request any additional evidence considered pertinent to the new determination and any other issues. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.