U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23650858

Date: DEC. 01, 2022

Appeal of Los Angeles, California 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).

The Director of the Los Angles, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the application did not merit approval as a matter of discretion because the negative factors presented outweighed any positive equities in the Applicant's case.

On appeal, the Applicant submits additional evidence and contends that the Director's decision contains multiple erroneous conclusions of fact. Further, he asserts that the Director erred by failing to consider all positive factors in his case, including his family ties in the United States, lack of criminal history, good moral character, and hardship to his spouse and other family if he is not allowed to return to the United States before the expiration of his inadmissibility period.

The Applicant bears the burden of proof in these proceedings 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). This office reviews the questions in this matter *de novo*. *See 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 additional review and the entry of a new decision.

I. LAW

Any noncitizen who is ordered removed as an "arriving alien," either through an expedited removal order or at the end of removal proceedings initiated upon arrival in the United States, departs the United States while the order of removal is outstanding, and seeks admission within five years of the date of his or her departure or removal is inadmissible. Section 212(a)(9)(A)(i) of the Act. An exception to the above bar is available in cases where prior to the date of the noncitizen's 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 reapplying for admission. Section 212(a)(9)(A)(iii) of the Act.

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 (Reg'l Comm'r 1973); *see also Matter of Lee*, *supra*, at 278 (finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character, and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience").

II. ANALYSIS

The record reflects that the Applicant is the beneficiary of an immigrant visa petition (Form I-130) filed on his behalf by his U.S. citizen spouse in July 2021. He indicates his intent to seek lawful permanent resident status based on this petition and filed the Form I-212 in August 2021.

The record reflects that the Applicant entered the United States as a B2 nonimmigrant visitor in July 2020, departed for a brief trip to Mexico in October 2020, and sought re-entry to the United States on [redacted], 2020. During secondary inspection, a Customs and Border Protection (CBP) officer determined the Applicant had engaged in unauthorized employment during his previous stay in B2 status. CBP found the Applicant inadmissible under section 212(a)(7)(A)(i)(I) of the Act as an immigrant without a valid entry document; the Applicant's nonimmigrant visa was cancelled, and he was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1361.

The Applicant does not contest his inadmissibility under section 212(a)(9)(A)(i) of the Act, which is supported by the record. The only issue on appeal is whether he merits a grant of permission to reapply for admission.

In support of his Form I-212, the Applicant submitted a certificate from the Romanian Ministry of Internal Affairs indicating that he has no criminal record; evidence that he completed a bachelor's degree in business administration in Romania; a certificate indicating his completion of an internship in Romania; proof of health insurance in the United States through his U.S. citizen spouse; evidence of his sister's U.S. citizenship and mother's lawful permanent resident status; a letter of support from his spouse, who provides details regarding their relationship and describes the emotional hardship of their separation; additional letters of support from the Applicant's mother, sister, mother-in-law, and a friend; and evidence that his sister filed a Form I-130, Immigrant Petition for Alien Relative on his behalf in April 2013, which remains pending. The Applicant indicated at the time of filing that his spouse had recently filed a Form I-130, Immigrant Petition for Alien Relative, but noted that he did not yet have a receipt notice.

In denying the Applicant's Form I-212, the Director acknowledged the Applicant's claim that his sister and mother would experience hardship based on the family's separation, but noted that "it was the decision of your sister and mother to be apart from you and live separate lives from you when they decided to . . . immigrate to the United States," suggesting that they would have stayed in Romania if they were unwilling to endure the hardship of separation. The Director also determined that USCIS could not consider the statements of the Applicant's spouse and mother-in-law because "no relationship-verifiable documents were submitted." The Director therefore concluded that "not much positive factors are noted."

The Director identified the adverse factors as the Applicant's unlawful employment while in B2 status; his entry to the United States as a visitor on a one-way ticket; and his admission to CBP that he had used a controlled substance at a party, in violation of Federal regulations. The Director emphasized the Applicant's statement to CBP that he was "only helping [his] friend" when he worked a few shifts at a restaurant, noting that "it doesn't appear you understood the serious nature of the circumstances and as such no remorse was found." The Director also cited to 22 C.F.R. § 41.31(a)(3), observing that "nonimmigrant visitors are required to travel with sufficient funds to cover the expenses during the stay in the United States." She suggested that the Applicant accepted unauthorized employment due to insufficient funds, and therefore violated this regulatory provision. Finally, the Director determined that "fundamentally, you have no approved petitions on your behalf." The Director concluded that the favorable factors did not outweigh the adverse factors and that a favorable exercise of discretion was not warranted.

On appeal, the Applicant asserts that the Director erroneously concluded that he had insufficient funds to cover his expenses as a B2 visitor, that he had "no remorse" for working without authorization, and that he had "no approved petitions," noting that the Form I-130 filed by his U.S. citizen spouse was approved in April 2022, prior to the denial of his Form I-212. The Applicant further asserts that the Director unfairly diminished his claim that his sister and mother would experience hardship during his five-year period of inadmissibility because they had already "decided to live in the United States" apart from him. He emphasizes that many immigrants seek new lives despite the hardship of leaving loved ones behind at home. He further notes that his sister filed a Form I-130 for him in 2013 and it was always the family's expectation to be reunited in the United States in the future.

In response to the Director's determination that USCIS could not consider the supporting statements from his spouse and mother-in-law due to a lack of "relationship-verifiable" evidence, the Applicant submits a copy of his marriage certificate, his spouse's birth certificate and passport, the approval notice for the Form I-130 he filed on the Applicant's behalf, photographs of the couple, additional letters of support, and new sworn statements from his spouse and other friends and family. The new statement from the Applicant's spouse further details the emotional and psychological hardship of being separated from the Applicant, the financial strain of living separately, and the fact that their same-sex marriage is not legal in Romania, where they would likely face discrimination.

The Applicant states that he regrets if it appeared to USCIS or CBP that he felt no remorse for violating the terms and conditions of his B2 nonimmigrant status or that he took the situation lightly. He indicates his intent to forfeit the $500 he received as payment for working in his friend's restaurant. He also emphasizes that he had both the intention and the financial means to purchase a return ticket

to Romania prior to the expiration of his B2 stay and that he did not work because he lacked the financial means to cover his expenses in the United States.

Finally, the Applicant asserts that the Director did not properly weigh his positive equities, including his close family ties, his lack of a criminal record, letters of support indicating his good moral character, his compliance with the terms and conditions of his nonimmigrant visas during previous stays in the United States, his lack of other grounds of inadmissibility, and his likelihood of becoming a permanent resident based on the approved petition filed by his spouse.

Here, the record supports the Applicant's claim that the Director erroneously concluded that he had no approved immigrant petition. Further, the record does not indicate that the Director considered the general hardships the Applicant claims his family in the United States will experience if he is required to remain outside the United States for the entire inadmissibility period, or the totality of the positive factors in his case. The fact that the Applicant's sister and mother immigrated to the United States while he remained in Romania does not lessen the weight to be given to the Applicant's close family ties in the United States or the hardship associated with their continued separation. In addition, the Director has not yet considered the statements from the Applicant's spouse, whose relationship with the Applicant is now fully documented in the record. Finally, the Director did not weigh the Applicant's lack of any criminal record, supporting letters attesting to his good moral character, and other positive factors mentioned in the Applicant's brief.

An officer must fully explain the reasons for denying a petition or application in order to allow the affected party a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

In light of the deficiencies noted above and considering the new evidence submitted on appeal, we find it appropriate to remand the matter to the Director to 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.