U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21166028

DATE: JUN. 10, 2022

Appeal of Philadelphia, Pennsylvania Field Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant, a native and citizen of China, seeks conditional approval of his application for 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); 8 C.F.R. § 212.2(j), for having been previously ordered removed. The Director of the Philadelphia, Pennsylvania Field Office denied the Form I-212, Application for Permission to Reapply for Admission (application for permission to reapply), concluding the Applicant's unfavorable factors outweigh his favorable factors and he does not merit a favorable exercise of discretion.

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; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). This office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, as explained below, we will remand the matter to the Director for the entry of a new decision.

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a foreign national who has been ordered removed under section 240 or any other provision of law, or who 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, is inadmissible. Foreign nationals found 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 continuous territory, the Secretary of Homeland Security has consented to the foreign national's reapplying for admission.

8 C.F.R. § 212.2(j) provides that a foreign national whose departure will execute an order of deportation shall receive a conditional approval depending upon his or her satisfactory departure. However, the grant of permission to reapply does not waive inadmissibility under section 212(a)(9)(A) of the Act resulting from exclusion, deportation, or removal proceedings which are instituted subsequent to the date permission to reapply is granted.

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. *See Matter of Lee,* 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978) (discussing the different factors to be considered in the discretionary determination of whether an applicant merits approval of an application to permission to reapply). 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); *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").

Equities that came into existence after a foreign national has been ordered removed from the United States ("after-acquired equities"), including family ties, have diminished weight for purposes of assessing favorable factors in the exercise of discretion. *See Garcia-Lopes v. INS*, 923 F.2d 72, 74 (7th Cir. 1991) (noting that less weight is given to equities acquired after a deportation order has been entered); *Camalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (providing that 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).

In this case, the Applicant does not contest that he will become inadmissible under section 212(a)(9)(A)(ii) of the Act, upon departure from the United States, for having been previously ordered removed.[1] The Applicant has therefore filed a conditional application for permission to reapply.

In denying the application for permission to reapply, the Director determined that the Applicant's favorable factors include his U.S. citizen spouse and two U.S. citizen children, his spouse's lawful permanent resident parents, and his lack of a criminal record. However, the Director noted that the Applicant's family ties are after-acquired equities and therefore were given diminished weight. Furthermore, while the Director determined that the Applicant's family would likely experience some emotional and financial hardship if they remained in the United States without the Applicant for ten years or accompanied him to China, the Director questioned the veracity of his claims of financial and mental hardship his spouse would experience. Specifically, the Director noted that the summary of the Applicant's household monthly expenses was more than his and his spouse's reported income, and while he provided psychiatric treatment reports for his spouse from April 2017 and April 2021, the record lacked evidence that she sought treatment between those dates. The Director determined that the Applicant's unfavorable factors include, but are not limited to, entering the United States using a

[1] The Applicant entered the United States with a K-1 nonimmigrant fiancé(e) visa in October 1994, he did not marry his K-1 fiancée, he filed for asylum in [redacted] 1995, his asylum application was denied, and he was placed in deportation proceedings. An immigration judge denied his asylum application in April 1996, and he was granted voluntary departure with an alternate order of deportation. The Applicant filed an appeal with the Board of Immigration Appeals, his appeal was dismissed in [redacted] 1996, and he was granted 30 days to voluntarily depart the United States. The Applicant did not depart the United States and therefore his deportation order was put in effect.

fraudulently procured K-1 visa, providing false information related to his date and manner of entry in his asylum proceedings and to immigration officers when he was arrested in [redacted] and [redacted] 1998, providing a false date of birth in his asylum application, not complying with his voluntary departure order, and his unauthorized residence and employment.[2]

The Applicant submits material evidence on appeal, including an updated statement from his spouse which references her prior asylum grant and other forms of hardship, family photographs, tax returns and W-2 forms from 2018 to 2020, an approval notice for his Form I-601A, Provisional Unlawful Presence Waiver, and an April 2019 psychiatric report for his spouse. Considering the new evidence submitted on appeal relating to the Applicant's favorable factors, we find it appropriate to remand the matter for the Director to reconsider if the Applicant has established that he merits a favorable exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision.

[2] Although the Director indicated that the Applicant fraudulently procured his K-1 visa, the Director did not find him inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation.