U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19275349

Date: JUNE 13, 2022

Appeal of Newark, New Jersey Field Office Decision

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

The Applicant will be inadmissible upon her departure from the United States for having been previously ordered removed and 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 Newark, New Jersey Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), as a matter of discretion, concluding that favorable factors did not outweigh the unfavorable factors in the case. The Applicant filed an appeal of the decision with this office. On appeal, the Applicant contends that she has established eligibility for the benefit sought. 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.

## I. LAW

Section 212(a)(9)(A)(ii) of the Act provides that any noncitizen, other than an "arriving alien" described in section 212(a)(9)(A)(i), who has been ordered removed or 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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of a noncitizen convicted of an aggravated felony) is inadmissible. Noncitizens 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 noncitizen's reapplying for admission.

Section 212(a)(6)(B) of the Act provides that any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the noncitizen's inadmissibility or deportability, and who seeks admission to the United States within five years of the noncitizen's subsequent departure or removal, is inadmissible. There is no waiver for this inadmissibility.

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).

## II. ANALYSIS

The record reflects that in [redacted], 2005, the Applicant was apprehended by immigration officials and placed into removal proceedings after entering the United States without inspection. The Applicant did not attend her removal hearing in [redacted] 2005, and was ordered removed in absentia by an immigration judge on that date. The Applicant has remained in the United States and is seeking conditional approval of her 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 she will be inadmissible upon her departure under section 212(a)(9)(A)(ii) of the Act.

In denying the Form I-212, the Director acknowledged three favorable factors but did not afford them considerable weight. With respect to the Applicant's marriage to her U.S. citizen spouse, the Director stated that the Applicant entered into the marriage with knowledge of the implications of her removal proceedings and concluded that a marriage where a removal order is already in place is not a heavily weighed favorable factor. The Director also indicated that the Applicant's three U.S. citizen children were favorable factors but stated that "[a]n alien illegally in the United States does not gain a favored status by the birth of a child in the United States . . . [n]evertheless, USCIS will consider this a positive factor, albeit a minor one." Lastly, the Director acknowledged that removal of the Applicant would be detrimental to the family's finances but stated that, "[t]he mere showing of economic detriment to qualifying relatives is insufficient to warrant a finding of extreme hardship." The Director concluded that the favorable factors were insufficient to overcome the negative impact of the Applicant's unlawful entry into the United States and failure to attend her removal hearing, an inadmissibility for which no waiver is available.

On appeal, the Applicant contends that the Director erred by failing to consider and weigh all the favorable factors in her case. She also contends that she had reasonable cause for not attending her removal hearing. Specifically, she states she did not attend her removal hearing because the Notice to Appear that she received did not provide the date and location for the hearing.

When considering whether a request for permission to reapply merits a favorable exercise of discretion, favorable factors may include hardship to the applicant and other U.S. citizen or lawful permanent resident relatives, the applicant's respect for law and order, and family responsibilities. Matter of Tin, 14 I&N Dec. at 373-74. However, there is no specific requirement that an applicant show extreme hardship, as referenced by the Director. Id. Extreme hardship to a qualifying relative

[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.

is a requirement for inadmissibility waivers under sections 212(a)(9)(B)(v), 212(h), and 212(i) of the Act. In the adjudication of a Form 1-212, any hardship to the Applicant or her family members is a factor to be considered in the discretionary analysis.

Here, the record does not indicate that the Director applied the correct standard in evaluating the claims of general hardships to the Applicant and her family members, such as emotional hardship to the Applicant's spouse from trying to continue his fulltime employment while providing care to their children, particularly their youngest child who has a phonological disorder and requires routine speech therapy. The denial also did not specifically address the evidence of additional significant positive equities in the record including the Applicant's apparent lack of a criminal history and letters of support speaking to the Applicant's good moral character.

In light of the deficiencies noted above and the Applicant's new claim submitted on appeal relating to the reasonable cause exception for inadmissibility under section 212(a)(6)(B) of the Act, we find it appropriate to remand the matter to the Director for reconsideration.

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