U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12915999

Date: JUN. 24, 2022

Appeal of San Juan, Puerto Rico 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), for having been previously ordered removed from the United States.

The Director of the San Juan, Puerto Rico Field Office denied the application. The Director concluded that the Applicant had not shown that a favorable exercise of discretion is warranted.

The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and states that the Director did not give sufficient weight to favorable discretionary factors.

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 dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen who has been ordered removed, or who departed the United States while an order of removal was outstanding, is inadmissible for 10 years after the date of departure or removal.

A nnoncitizen 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) of the Act 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 reapplication for admission.

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).

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) (less weight is given to equities acquired after a deportation order has been entered); Carnalla-Munoz v. INS, 627 F.2d 1004, 1007 (9th Cir. 1980) (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).

II. ANALYSIS

The Director states that, upon her departure from the United States, the Applicant will be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), for having been previously ordered removed. She seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States. The issue on appeal is whether the Applicant merits a favorable exercise of discretion and is based on a review of the record.

The Applicant, a national and citizen of the Dominican Republic, entered U.S. territory in or around August 2002 utilizing an alias, [redacted] In [redacted] 2002, she was ordered removed from the United States. However, the Applicant did not leave and has been residing in the United States since that time. In 2015, her U.S. citizen daughter filed a Form I-130, Petition for Alien Relative, on her behalf, and it was approved. In August 2016, her Form I-601A, Application for Provisional Unlawful Presence Waiver, was denied. Later, in [redacted] 2016, the Applicant married a U.S. citizen.

The Director identified the Applicant's Form I-130, Petition for Alien Relative, approval as a parent of a U.S. citizen as a positive factor. However, the Director determined that this positive factor was insufficient to overcome the negative impact of the Applicant's failure to comply with her removal order. Although the Applicant asserted that her daughter, spouse, and grandchildren would suffer economic, emotional, medical, and physical disadvantages if the Applicant was removed, the Director determined that no substantial evidence had been submitted. The Director also noted that any hardship to the Applicant's spouse were created after she had been ordered removed and were therefore after-acquired equities.

The Director also stated that when she completed her Form I-601A, Application for Provisional Unlawful Presence Waiver the Applicant, the Applicant did not disclose her prior use of the alias, which was the name under she was ordered removed. The Director concluded that the Applicant knowingly and willfully gave false or misleading information while applying for an immigration benefit to gain entry or admission into the United States.

On appeal, the Applicant asserts that this application was erroneously denied. The Applicant states that U.S. Citizenship and Immigration Services (USCIS) did not acknowledge that she was a "material witness" for the U.S. Government and was cooperating with the government during the period she was

ordered to deport. The Applicant also argues that she "involuntary" omitted from the I-601A her immigration record compiled while utilizing the alias, and that she did not intend to willfully misrepresent material facts. She also asserts some favorable factors we should consider are the recency of her deportation, length of residency in the United States, her moral character, evidence of reformation or rehabilitation, family responsibility (her spouse, her three children, and her grandchild), and hardship that would accrue to herself and to others.[1] Lastly, the Applicant contends that her marriage was not a spurious marriage because she did not marry immediately after her removal order but instead married 14 years later.

We have reviewed the entire record, including the evidence submitted with the initial application and on appeal, and we agree with the Director that the evidence is insufficient to show that a favorable exercise of discretion is warranted.

Regarding the Applicant being a witness for the U.S. government, while the record does suggest that may be true, it does not indicate it was the reason she failed to depart the United States. In any event, the Applicant has not provided additional evidence to support her claim. Even if the Applicant was a material witness for the United States, the Applicant was still ordered removed and would still need to file a Form I-212, such as this instant application, for permission to reapply for admission.[2]

Regarding the Director's finding that the Applicant made false or misleading information on her Form I-601A application, the Applicant minimizes it as an "involuntary omission" and states she was aware that she was "detained and processed." However, in signing the Form I-601A, the Applicant certified under penalty of perjury that the information in the application are complete, true, and correct. In failing to disclose her alias, the Applicant obscured her immigration history and shut off a material line of inquiry concerning her eligibility for an immigration benefit. Therefore, the Applicant appears to have willfully misrepresented a material fact, which is a negative factor to be weighed in this discretionary analysis.

While we acknowledge the Applicant's longtime residence in the United States, family ties in the United States, and apparent lack of criminal history, the Applicant has provided insufficient evidence to support her claimed hardships.[3] The spouse's medical reports provided with the initial submission and on appeal provide a list of his conditions, which include but are not limited to, diabetes mellitus type II, hypertensive heart disease, osteoarthritis, chronic kidney disease, and amenia. While we acknowledge the spouse's medical conditions, the record does not establish that the spouse relies on the Applicant for medical assistance, or whether his medical conditions seriously impair the spouse's

[1] We note there appears to be a discrepancy on how many grandchildren the Applicant claims. The statement signed by the Applicant's daughter and husband states that the Applicant has four grandchildren, but the appeal brief states that her family responsibility includes only a "USC grandson."

[2] The record indicates that the Applicant had arrangements to depart the United States to the Dominican Republic on August 25, 2004.

[3] The record includes a Negative Certificate of Penal Record from the Police of Puerto Rico.

daily activities.[4] Nor do the documents confirm or highlight the Applicant's assertion that her spouse's leg is completely paralyzed. Regarding their financial hardships, the Applicant has not provided supporting documents, such as paystubs, tax returns, mortgage, or a detailed list of monthly expenses, to establish the couple's income and expenses.[5] Without more, we do not have complete picture of the Applicant's financial situation to determine her claim of financial hardship. Moreover, although the marriage may not be "spurious," we nonetheless agree with the Director that the Applicant's marital ties, responsibilities, and hardships related to her spouse hold diminished weight in our discretionary analysis because the Applicant's marital relationship and any related equities came into existence after she had been ordered removed.[6]

In addition, while the Applicant asserts that separation would affect her family responsibilities to her three children and grandchild(ren), her children are adults and the record does not establish that they could not support themselves in her absence. Regarding her grandchild(ren), the record is unclear as to why another family member could not take care of them.[7]

We acknowledge evidence of other favorable factors in the Applicant's case, including documents attesting to her good character, her employment, and information regarding conditions in the Dominican Republic. This evidence, however, is insufficient to overcome the adverse impact of the Applicant's non-compliance with her removal order, unlawful presence in the United States since 2002, and exclusion of material information regarding her immigration history in an application to USCIS.

Given the lack of supporting evidence in the record, we conclude, even when viewing the totality of the circumstances, that the Applicant has not demonstrated that the positive factors in her case considered individually and, in the aggregate, outweigh the negative factors. A favorable exercise of discretion is therefore not warranted, and the Applicant's request for permission to reapply for admission to the United States remains denied.

ORDER: The appeal is dismissed.

[4] The Applicant claims that the evidence include documents on the spouse's handicap, some of which are in the Spanish language. Although the record contains some documents that are written in Spanish, they have not been translated into English, and consequently cannot be considered. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

[5] In her statement, the Applicant indicated that she has included paystubs, but none appear to have been submitted.

[6] As earlier noted, the Applicant was order removed in 2002 and married her spouse in 2016.

[7] The statement signed by the Applicant's daughter and spouse state that the Applicant has four grandchildren and that the Applicant takes care of two of them. However, as noted earlier, the appeal brief only states the Applicant's family responsibility is to a "USC grandson."