U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21128813

Date: JUN. 28, 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), because he will be inadmissible upon departing from the United States for having been previously ordered removed.

The Director of the Los Angeles, California Field Office denied the application, concluding that the Applicant did not establish that a favorable exercise of discretion was warranted in his case. On appeal, the Applicant submits updated evidence and contends that the Director made errors of law and fact and erred in finding that the negative factors in his case outweighed the positive equities.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. 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 that any noncitizen, other than an "arriving alien" described in section 212(a)(9)(A)(i), who "has been ordered removed under section 240 or any other provision of law ... 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."

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). 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 Applicant is currently in the United States and seeks conditional permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before he departs.[1] He does not contest that he will become inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure for having been previously ordered removed. The only issue on appeal, therefore, is whether the Applicant has demonstrated that approval of his Form I-212 is warranted as a matter of discretion.

The record reflects that the Applicant entered the United States without inspection in 1985. In 2013, he was placed in removal proceedings and was ordered removed in 2017. The Applicant subsequently filed a timely appeal with the Board of Immigration Appeals (the Board) and in [redacted] 2019, the Board dismissed the Applicant's appeal and ordered him removed. The Applicant did not depart and continues to reside in the United States. In the meantime, the Applicant's U.S. citizen son had filed a Form I-130, Petition for Alien Relative, on his behalf in October 2013, and it was approved in February 2015.

We have reviewed the entire record, including the additional evidence submitted on appeal, and for the reasons explained below conclude that it is still insufficient to establish that a favorable exercise of discretion is warranted.

The Director discussed the favorable factors such as the Applicant's long residence in the United States and family ties, including his U.S. citizen children, mother, siblings, spouse and stepchildren. In addition, the Director noted the letters from family and friends indicating the Applicant's good moral character, and dicussed the hardship to his mother. The Director also discussed the unfavorable factors in the Applicant's case, including his criminal history that included sexual battery, burglary, driving under the influence of alcohol, child engagement, and driving with a suspended license, and the Applicant's failure to provide evidence of registering as a sex offender in California and Texas. In addition, the Director noted the additional unfavorable factors including the accrual of unlawful presence in the United States since his entry in 1985 and his failure to depart the United States after he was ordered removed. The Director ultimately concluded that the unfavorable factors far outweigh the favorable factors. On appeal, the Applicant generally reasserts the hardships his spouse, children, and mother will face if his waiver is

[1] The approval of the Form I-212 under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if the Applicant does not depart.

not granted. In addition, he contends that the passage of 16 years without an additional criminal violation indicates rehabilitation.

Upon consideration of the entire record, including the arguments made on appeal, we adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

On appeal, the Applicant reiterates his family ties in the United States and the hardships that would accrue to his spouse, children, and mother. The Applicant also states a significant positive factor is the lack of recent criminal activity evidencing his rehabilitation and reformation. The Applicant indicates that his last encounter with law enforcement was over 16 years ago for a violation of probation. The Applicant also states that he submitted medical records evidencing that his mother suffers from medical ailments, and he provided tax returns to demonstrate his ability to assist his mother financially. In addition, the Applicant claims that he did not register as a sex offender when he lived in Texas because when he tried to register with the sheriff's department, they could not register him because the offense occurred in California, and they could not find his criminal record. The Applicant submits proof of sex offender registration status when residing in California.

After considering the record in its entirety, we do not find the Applicant's arguments on appeal overcome the reasons for the Director's denial. As discussed above, the Director appropriately identified and weighed the positive and negative factors presented by the record. While we acknowledge the statements made on appeal, including the hardships to his spouse, children, and mother, as well as the passage of time since the Applicant's last criminal violation, we nonetheless agree with the Director that the unfavorable factors, such as his lengthy and varied criminal history, outweigh the favorable factors. Although we are sympathetic to the claims of hardship to the Applicant and his spouse, children, and mother if his application is denied, the positive factors do not outweigh the negative factors in evaluating whether the Applicant warrants a favorable exercise of discretion. Accordingly, the application will remain denied.

ORDER: The appeal is dismissed.