U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13506229

Date: MAY 04, 2022

Appeal of New York City, New York Field Office Decision

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

The Applicant filed his Form I-212 seeking permission to reapply for admission to the United States under section 212(a)(9)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii), because he is inadmissible after having been unlawfully present in the United States for an aggregate period of more than one year and then entered the United States without being admitted.

The Director of the New York City, New York Field Office, denied the Form I-212, concluding that the Applicant was statutorily ineligible to file for a waiver under section 212(a)(9)(C)(ii) of the Act because he was not outside of the United States when filing his waiver application. The Director also found the Applicant's favorable factors did not outweigh the adverse factors and denied the application as a matter of discretion. On appeal, the Applicant argues that the Director ignored substantial positive equities and misconstrued negative equities in erroneously measuring the balance and also made a legal error by issuing a decision that included the incorrect name, address, file number, and receipt number.

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

Section 212(a)(9)(C)(i)(I) of the Act provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than 1 year, or has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible.

Noncitizens found inadmissible under section 212(a)(9)(C) of the Act may seek permission to reapply for admission under section 212(a)(9)(C)(ii), which provides that inadmissibility shall not apply to a noncitizen seeking admission more than ten years after the date of last departure from the United States if, prior to the reembarkation at a place outside the United States or attempt to be readmitted from a

foreign contiguous 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. *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").

When a Service officer denies an application or petition, the officer shall explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i).

II. ANALYSIS

The record reflects the Applicant filed his Form I-212, indicating that he was requesting a waiver for entering or attempting to enter the United States, without being admitted or paroled, after having been unlawfully present in the United States on or after April 1, 1997, for a period of more than one year, in the aggregate.[1] The Director denied the application, finding the Applicant was not outside of the United States when he filed his Form I-212, as required by section 212(a)(9)(c) of the Act. However, the Director's decision contained the incorrect name and address as well as the incorrect alien number and receipt number of the Applicant's Form I-212, indicating the decision may have been mailed to the wrong address. On appeal, the Applicant notes confusion regarding the Director's decision due to the incorrect information listed in the order and requests the Director re-evaluate the discretionary findings made in the decision.

As the Director's decision did not provide adequate notice to the Applicant due to listing the incorrect name, address, alien number, and receipt number, we will remand the matter for entry of a new decision providing proper notice to the Applicant and explaining, with specificity, the reasons for the denial as required under 8 C.F.R. § 103.3(a)(1)(i). On remand, the Director should also review and weigh all positive and negative factors with consideration to all evidence presented if making a discretionary finding.

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

[1] The Applicant checked box 8 in Part 2 of his application but did not request a waiver for any other ground of inadmissibility.