U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16876107

Date: MAY 05, 2022

Appeal of Brooklyn, New York 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)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii). The Applicant indicates he is inadmissible under section 212(c)(A)(9)(C)(i) of the Act for entering the United States without being admitted or paroled after having accrued more than one year of unlawful presence in the United States and after having been previously ordered removed from the United States.

The Director of the Brooklyn, New York Field Office denied the Form I-212, Application for Permission to Reapply for Admission, concluding that the Applicant did not establish a favorable exercise of discretion is warranted in his case. On appeal, the Applicant contends that the Director's decision contains numerous factual errors and that the Director did not consider all relevant factors in determining whether the application merits a favorable exercise of discretion.

We review 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 the entry of a new decision.

I. LAW

Section 212(a)(9)(C)(i) of the Act provides that a noncitizen who has been unlawfully present in the United States for an aggregate period of more than one 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, 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 the Applicant entered the United States without being inspected and admitted, or paroled in [redacted] 1984, and was apprehended by immigration officials. An immigration judge ordered him deported *in absentia* in [redacted] 1985, and he was instructed to report for his deportation to Ecuador in [redacted] 1986. The Applicant departed the United States in December 1985 and indicates he later entered without inspection and remained in the United States on three occasions: from 1988 to 1990, from 1994 to 1995, and from 2000 until 2003. The Applicant states that he last departed the United States in December 2003 and provided evidence in support of his assertion that he has resided in Ecuador since that time.

In 2018, a U.S. Department of State consular officer refused the Applicant's application for an immigrant visa. The consular officer determined that the Applicant is inadmissible under section 212(a)(9)(C)(i) of the Act for accruing one year or more of unlawful presence and for reentering the United States without being admitted or paroled following a previous order of removal or deportation. The Applicant does not contest his inadmissibility under section 212(a)(9)(C)(i) of the Act.

The Applicant filed the Form I-212 along with a detailed affidavit explaining the circumstances of his entries to the United States and other personal information in support of his request for relief. He also provided evidence for the following: marriage to his lawful permanent resident spouse since 1983; absence of any criminal record in Ecuador; registration as a pastor with the Ecuador Ministry of Justice, Human Rights and Worship; and residence in Ecuador since his departure from the United States in December 2003.

The Director denied the application concluding that the Applicant did not establish that a favorable exercise of discretion is warranted because the evidence did not establish the positive factors present in this case. On appeal, the Applicant maintains that the Director's decision contains factual errors and oversights which suggest that his application was not thoroughly evaluated.

We agree with the Applicant's assertions on appeal that the Director's decision contains multiple factual errors. For example, the decision contains the following passage:

> [An] Immigration Judge ordered you removed from the United States to China pursuant to the Immigration Jude's order. Based on the final order of deportation entered against you on March 28, 1985, you are inadmissible under INA 212(a)(9)(A)(ii) and must receive consent to reapply for admission under INA 212(a)(9)(A)(iii) in order to

> overcome this ground of inadmissibility. Therefore, you presently seek conditional approval of your application for consent to reapply so that you may depart the United States to apply for an immigrant visa abroad. You have indicated on your Form I-212 that you currently reside in Brooklyn, New York.

As noted above, the Applicant is a native and citizen of Ecuador who was ordered deported to Ecuador in [redacted] 1985; he was not ordered deported to China in March 1985. Further, he currently resides in Ecuador and is not seeking conditional approval of his Form I-212.[1] Finally, as noted above, the Applicant filed the Form I-212 because the U.S. consular officer who reviewed his immigrant visa application determined he is inadmissible under section 212(a)(9)(C)(i) of the Act; the record does not support a determination that he is inadmissible under section 212(a)(9)(A)(ii) of the Act.

In addition, although the Director correctly identified the types of positive and negative factors that must be weighed in determining whether the application warrants a favorable exercise of discretion, the analysis included in the decision also contains errors. The Director determined that the only potential positive factor presented was the Applicant's claim that he is married to a lawful permanent resident but emphasized that the record did not contain a copy of the marriage certificate. The Applicant's Ecuadoran marriage certificate (along with a certified English translation) was in fact provided. The Director also mischaracterized other evidence in the record, intended to establish the Applicant's residence abroad, as pertaining to his spouse, and it is unclear whether such evidence was reviewed to establish his residence abroad for at least ten years. The decision does not discuss negative factors in the record or how they were weighed, and notes that the Applicant's claimed marriage to a lawful permanent resident was the only potentially positive factor presented and therefore the Applicant did not establish how his presence would "benefit society." The Applicant maintains that the Director failed to address positive factors explained in his personal affidavit, the absence of a criminal record in Ecuador, and evidence that supports his good moral character.

An officer must fully explain the reasons for denying an application in order to allow the applicant a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). The errors in the Director's decision suggest that the decision was issued without a full and complete review of the facts of the case and the positive and negative factors presented in the record.

Considering the deficiencies noted above, we find it appropriate to withdraw the Director's decision and remand the matter to the Director to reevaluate the submitted evidence and determine whether the Applicant warrants a favorable exercise of discretion.

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 record reflects that the Applicant's lawful permanent resident spouse resides in [redacted] New York.