U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16715326

Date: MAY 12, 2022

Appeal of Las Vegas, Nevada Field Office Decision

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

The Applicant has filed a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal.[1] *See* Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii). *See also* Section 212(a)(9)(A)(ii) of the Act. The Director of the Las Vegas, Nevada Field Office denied the application, concluding that the Applicant did not submit "evidence of possible hardship over and above the normal social and economic hardships involved in the removal of a family member" and that the Applicant "failed to establish that [he has] continuously resided outside the United States since [his] last claimed departure date of January 12, 2010."

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). 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 additional review and the entry of a new decision.

I. LAW

A noncitizen may file a Form I-212 application if he or she is inadmissible under Section 212(a)(9)(A) of the Act. A noncitizen is inadmissible under Section 212(a)(9)(A) of the Act if he or she was removed from the United States or departed the United States on his or her own after being ordered removed, and subsequently seeks admission to the United States or seeks adjustment of status to that of a lawful permanent resident. Under the regulation at 8 C.F.R. § 212.2(j), a noncitizen whose departure will execute an order of removal may, prior to leaving the United States, seek conditional approval of a Form I-212 application for permission to reapply for admission. The approval of the

[1] The Applicant had previously filed another Form I-212 application, which the Director of the Las Vegas, Nevada Field Office denied. We subsequently dismissed the appeal in June 2019, finding "the Applicant has not established that the favorable factors in his application outweigh the unfavorable ones." *Mater of M-M-V-*, ID# 02822913 (AAO Jun. 21, 2019).

application under these circumstances is conditioned upon the noncitizen's departure from the United States and would have no effect if he or she fails to depart.

Approval of a Form I-212 application 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); *see also Matter of Lee*, 17 I&N Dec. at 278.

Generally, favorable factors that came into existence after a noncitizen has been ordered removed from the United States are given less weight in a discretionary determination. *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 Applicant, a native and citizen of Mexico, claims to have entered the United States at the United States-Mexico border in or around 1994 without being inspected or admitted. In 2008, he was arrested for providing false information to a police officer in Utah.[2] The Immigration and Customs Enforcement (ICE) encountered the Applicant in a jail in Utah and initiated removal proceedings against him. On [redacted] 2010, an immigration judge granted the Applicant's request for voluntary departure until May 2010 upon posting a $500 bond. The immigration judge also entered an alternate order of removal to Mexico. In November 2010, the Board of Immigration Appeals (BIA) dismissed the Applicant's appeal of the immigration judge's order and noted that because he did not "submit[] timely proof of having paid the voluntary departure bond," he "shall be removed from the United States . . . pursuant to the Immigration Judge's alternate order." In 2011, the U.S. Court of Appeals for the Ninth Circuit dismissed the Applicant's petition for review.

The Applicant has been living in the United States without legal status since 1994 and he has not departed the country pursuant to the immigration judge's [redacted] 2010 alternate order. If he now departs the United States, he would be inadmissible under Section 212(a)(9)(A)(ii) of the Act. He therefore has filed a Form I-212 application seeking conditional approval for permission to reapply for admission. *See* 8 C.F.R. § 212.2(j). The Director erred in denying the Form I-212 application on the ground that the Applicant "failed to establish that [he has] continuously resided outside the United States since [his] last claimed departure date of [redacted] 2010," because the Applicant has not

[2] The Applicant has not explained the circumstances surrounding this arrest or provided court or other documents concerning the disposition of this arrest.

departed the United States since 1994 and is seeking conditional approval of the application under 8 C.F.R. § 212.2(j).

In addition, in the decision denying the Form I-212 application, the Director indicated that the Applicant did not offer evidence "of possible hardship over and above the normal social and economic hardships involved in the removal of a family member." The Applicant, however, is not required to show the level of hardship noted in the Director's decision. Rather, the Director must examine and weigh all the factors, both positive and negative ones, to determine whether the Form I-212 application should be granted in the exercise of discretion. *See Matter of Lee*, 17 I&N Dec. at 278-79.

It appears that the Director did not consider all favorable factors in this case when adjudicating the Applicant's Form I-212 application. For example, it appears that the Director did not consider the Applicant's length of residence in the United States, his moral character, his family responsibilities, hardship involved to him and others, and the need for his services in the United States. *See Matter of Tin*, 14 I&N Dec. at 373-74; *see also Matter of Lee*, 17 I&N Dec. at 278. The Applicant claims that he entered the United States in 1994 and that he has been living in the country for over 25 years; he has been married to a United States citizen since 2011; he has two United States citizen minor children, born in 2012 and 2014, respectively; and he alleges that he has other family members residing in the United States including his step-children, mother, siblings, and in-laws. The record includes an approval notice for a Form I-130, Petition for Alien Relative, that his spouse filed on his behalf, as well as letters from his family members and friends attesting to his moral character.

The Applicant asserts that he has presented evidence concerning other favorable factors. He offers a 2020 letter from his spouse's doctor, stating that his spouse experiences "mental and physical health" issues, including "anxiety, stress and depressive symptoms" and that she "has difficulties in sleep, appetite, concentration, and social interactions." In her March 2020 statement, the Applicant's spouse alleges that she suffers from "tympanic perforation, anemia, abnormal thyroid, and fatty liver," and that she takes medications to manage her conditions. She further claims to be "a victim of domestic violence for several years" before meeting the Applicant, and that he is her "main source of emotional support," helping her "make great progress in processing [her] trauma."

Moreover, the Applicant's spouse states that she and their children rely on the Applicant financially, because she does not work and the Applicant provides "the primary source of income for [the] family." In his appellate brief, the Applicant claims that he has been "gainfully employed" has "compl[ied] with his obligation to pay taxes." He also claims that he would not be able to find employment or support his family if he were returned to Mexico. Both the Applicant and his spouse maintain that they started a trucking business in the United States that employs 18 employees. The Applicant's spouse indicates that if the Applicant's Form I-212 application were denied, they would "lose [the] company" and that "not only [would their] family suffer, but those of [their employees]" would also be negatively affected.

While the Director identified some favorable factors in the decision denying the Form I-212 application, there appear to be additional favorable factors in this case that the Director did not consider. They include the Applicant's length of residence in the United States, his moral character, his family responsibilities, hardship involving him, his spouse and their children, and the need for his

services in the United States.[3] *See Matter of Tin*, 14 I&N Dec. at 373-74; *see also Matter of Lee*, 17 I&N Dec. at 278. As the Director's decision does not reflect a proper analysis of the favorable and unfavorable factors in the Applicant's case, as required, we will remand the matter for entry of a new decision regarding his eligibility for the Form I-212 application.

III. CONCLUSION

In light of the deficiencies noted above and given the lack of sufficient analysis in the Director's decision, we are remanding the matter for the Director to review the entire record, including documentation the Applicant presents on appeal, and determine whether he merits a conditional approval of his Form I-212 application in the exercise of discretion. On remand, the Director shall review and weigh all positive and negative factors with consideration to all evidence presented.

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

[3] We note that the Director may decide to afford less weight to any favorable factors that came into existence after the immigration judge's 2010 alternate order of removal. *See Garcia-Lopes*, 923 F. 2d at 74; *Carnalla-Munoz*, 627 F. 2d at 1007.