



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 19315896

Date: MAY 13, 2022

Appeal of Los Angeles, California Field Office Decision

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

The Applicant will be inadmissible upon his departure from the United States for having been previously ordered removed and seeks advance 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).

The Director of the Los Angeles, California Field Office denied the Form I-212, as a matter of discretion, concluding that the favorable factors did not outweigh the unfavorable factors in the case. On appeal, the Applicant submits additional evidence and asserts that the positive factors in his case outweigh any negative factors.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides in relevant part that any noncitizen who has been ordered removed, 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 who are 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 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 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).

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 be inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure for having been previously ordered removed. The only issue on appeal 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 being admitted in October 1989. In [] 2001, the Applicant was placed in removal proceedings. At his removal hearing in [] 2005, the Immigration Judge ordered the Applicant removed to Mexico. The Applicant appealed the matter to the Board of Immigration Appeals (the Board), and in April 2007, the Board dismissed his appeal and concluded that he was ineligible for cancellation of removal. The Applicant did not depart and has been residing in the United States since that time. In December 2019, the Applicant's son filed a Form I-130, Petition for Alien Relative, on the Applicant's behalf, which was approved in July 2020.

In support of the Form I-212, the Applicant submitted a personal statement; his marriage certificate; copies of his spouse's U.S. certificate of naturalization and U.S. passport; birth certificates for their two U.S. citizen children (born in 1991 and 1997); the children's academic records; and letters of support from family and friends. He also presented a July 2020 clinical evaluation from a psychotherapist; Mayo Clinic definitions for generalized anxiety disorder, depression, and post-traumatic stress disorder; and information about country conditions in Mexico. In addition, the Applicant provided separately filed U.S. income tax returns (2017-2019) for the both the Applicant ("Single" filing status) and his spouse ("Head of household" filing status) which listed different home addresses, a monthly income and expense report, bank records, billing statements, car insurance information, vehicle title certificates, and family photographs.

In his personal statement, the Applicant contends that he will face economic hardships and the prospect of becoming a victim of crime in Mexico if he is denied admission. He explains that he runs a car wash business in California and expresses concern that work as a car washer will be unavailable to him in Mexico. The Applicant asserts that he is his "household's main source of income" and that he does not want to place his spouse and two adult children in a position of having to support him financially in Mexico. He further states that he has been diagnosed with major depressive disorder, generalized anxiety disorder, and post-traumatic stress disorder, and claims that his spouse has been instrumental in helping him manage his condition.

The letters of support from the Applicant's two sons describe their father as hardworking, dedicated to his community, and a positive influence. While both sons assert that the Applicant is devoted to

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 he failed to depart.

his family, they do not state that they or their mother rely on the Applicant as their main source of financial support.²

The Director acknowledged that there were favorable considerations in the Applicant's case, including his marriage to a U.S. citizen, family ties in the United States, and the prospect of hardship to him and his family. The Director determined, however, that these positive factors were insufficient to overcome the negative impact of the Applicant's entry into the United States without inspection, convictions in California for "corporal injury to spouse/cohabitant" ([redacted] 2004) and "disorderly conduct: prostitution" ([redacted] 2004), noncompliance with his removal order, and likelihood of becoming a public charge. The denial highlighted that the record did not contain sufficient documentary evidence to support the claim of psychological or financial hardship. For example, regarding psychological hardship, the Director noted that while the Applicant has been diagnosed with major depressive disorder, generalized anxiety disorder, and post-traumatic stress disorder, he did not provide information about the care and treatment he received after the clinical evaluation, or evidence showing that his conditions were incapacitating.

Likewise, with respect to financial hardship, the Director stated that the Applicant's monthly income and expense report did not correlate with the earnings shown in the federal income tax returns and his claim of financial hardship to his family. The Director further noted that the separate home addresses listed on the tax returns and the Applicant's failure to provide a lease or other evidence of residency with his immediate family members cast doubt on his claim that he was the main source of the family's income. Additionally, the Director indicated that the income amounts listed on the Applicant's tax returns rendered him likely to become a public charge.

With the appeal, the Applicant provides information from the Superior Court of California, [redacted] [redacted] indicating that in 2019, he filed a motion to vacate his corporal injury to spouse/cohabitant conviction. He pled guilty to a lesser misdemeanor battery charge and his conviction for corporal injury to spouse/cohabitant was then vacated. In addition, the Applicant resubmits his July 2020 clinical evaluation and provides an article discussing the mental health stigma in Latin America. He also resubmits his financial records and information about country conditions in Mexico. Furthermore, the Applicant presents a letter from the pastor of his church stating: "[The Applicant] has never been arrested to my knowledge. I have never heard anything contrary about him or his family. His two sons graduated [redacted] and [redacted]. . . His family has been members of this parish for some 26 years."

The Applicant asserts in the appeal brief that the favorable factors in his case outweigh any unfavorable factors. He contends that his "convictions occurred over 15 years ago" and that he has demonstrated good moral character since that time. The Applicant further argues that his request for a waiver merits a favorable exercise of discretion because he has built a family here, established significant ties, operated a car wash business, paid taxes, not relied on government assistance, and volunteered at his local church.

² The Director erred in stating that the letters of support were insufficient to demonstrate "extreme hardship" to the Applicant and his family, as any hardship can be considered in a Form I-212 discretionary analysis. *Matter of Tin*, *supra*. Nonetheless, this misstatement does not significantly undermine the remaining grounds for denial discussed in the Director's decision.

We have reviewed the entire record, and for the reasons explained below, agree with the Director that the evidence is insufficient to show that a favorable exercise of discretion is warranted. The most significant negative factors in the Applicant's case are his entry into the United States without inspection, convictions for battery and disorderly conduct (prostitution), noncompliance with his removal order, longtime unlawful residence in the United States, and unauthorized employment. The positive factors include the Applicant's longtime U.S. residence, family ties in the United States, financial and emotional hardship to his family and himself, his psychological condition, his payment of taxes, and difficult conditions in his native Mexico.

There is no dispute that the Applicant and his family will be negatively affected if he must remain abroad for the entire inadmissibility period. However, his income tax returns indicate that he has resided separately from his spouse and two children for at least three years, despite his claim that he is the "household's main provider." Further, the Applicant has not shown that his spouse and children are unable to provide financial and emotional support to each other in his absence. Nor is there evidence that his spouse would not be able to continue her current employment or otherwise supplement her income in the Applicant's absence. Regarding the claimed medical hardship to the Applicant, his clinical evaluation does not indicate that his psychological conditions prevent him from working or carrying out other daily activities, or that he would be unable to receive adequate health care if he must remain abroad until his inadmissibility period expires.

We acknowledge the country information for Mexico and recognize that the Applicant may experience difficulties if he must remain there for the entire inadmissibility period. However, we note that the Applicant lived in Mexico until he was 19 years old, and he has not identified the locality where he would be likely to reside in Mexico, the employment opportunities and medical care available there, or the risks to his personal safety and security in that specific locality. Furthermore, in his personal statement, the Applicant does not acknowledge his convictions for "corporal injury to spouse/cohabitant" and "disorderly conduct: prostitution," express regret for these criminal violations, or discuss his rehabilitation.

We recognize that there are favorable factors in the Applicant's case, including his family ties in the United States, the emotional and financial support he provides his family, the hardship he and his family will experience as a result of separation, and the approved Form I-130 filed on his behalf. The Applicant's additional favorable equities include his psychological conditions, employment, payment of taxes, the length of his presence in the United States, and difficult country conditions in Mexico. This evidence and the positive equities relating to his family, however, are insufficient to overcome the adverse impact of his entry into the United States without inspection, convictions for battery and disorderly conduct (prostitution), noncompliance with his removal order, period of unlawful residence in the United States, and unauthorized employment.

Consequently, we agree with the Director that the positive factors considered individually and in the aggregate do not 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.