U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16629495

Date: MAY 26, 2022

Appeal of New York, 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)(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. *See* section 212(a)(9)(A)(ii) of the Act. Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion.

The Director of the New York, New York District 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 contends that the Director erred in finding that the negative factors in his case outweighed the positive equities.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Applicant has not met this burden.

I. LAW

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any noncitizen, other than an "arriving alien" described in section 212(a)(9)(A)(i) of the Act, 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 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. *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).

Generally, favorable factors that came into existence after a noncitizen was ordered removed 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).

Any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the noncitizen's inadmissibility or deportability and who seeks admission to the United States within five years of such noncitizen's subsequent departure or removal is inadmissible. Section 212(a)(6)(B) of the Act.

II. ANALYSIS

The Applicant is currently in the United States and seeks permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before departing the United States. He does not contest that he has an outstanding order of deportation and will be inadmissible under section 212(a)(9)(A)(ii) of the Act once he departs.

On appeal, the Applicant contends that the Director erred by failing to appropriately consider and weigh the submitted evidence. We do not agree.

The record reflects that in [redacted] 1998, the Applicant was placed in removal proceedings because he entered the United States without being inspected, admitted, or paroled. He did not attend his removal proceedings and was ordered removed *in absentia* in [redacted] 1998.[1] The Applicant never departed the United States and has remained here without status since [redacted] 1998.

The Director denied the application for permission to reapply for admission, finding that the Applicant had not demonstrated that he merited a favorable exercise of discretion. The Director weighed the unfavorable factors including his *in absentia* removal order and unlawful presence in the United States since [redacted] 1998 against his family and community ties, good moral character, and hardships to his spouse, and found that the favorable factors did not outweigh the unfavorable factors. The Applicant's

[1] We note here that because the Applicant was ordered removed *in absentia,* it appears he will also be inadmissible for five years after departing the United States for failing to attend his removal proceedings without reasonable cause. Section 212(a)(6)(B) of the Act.

family ties include his legal permanent resident spouse, and his community ties include his religious community, friendships, and work ties.

We acknowledge that several letter writers vouch for the Applicant's good moral character and volunteer work. However, the letters do not demonstrate strong community ties. For instance, the letter provided from his religious community states that the Applicant has attended their religious community for four months. Another letter describes in very general terms that the Applicant has provided food for their program. We do not point out these details to discredit the Applicant's ties, but instead to point out that in the context of his over 30 years of residence in the United States, these community ties do not appear to be longstanding or strong. Similarly, his marriage, which took place in [redacted] 2018, has not been a significant tie throughout his time in the United States. The Applicant's spouse immigrated from a Spanish-speaking country in 2016 and states that she has not worked recently because of fear of contracting COVID-19. She also describes her only significant tie to the United States as the Applicant. Although she is not from the same country of origin as the Applicant, she speaks Spanish, which is spoken in Ecuador, the Applicant's country of origin. We have carefully considered the letter from the Applicant's spouse explaining her history of emotional problems, medical challenges, and distrust of others because of her prior marriage and the events that took place during that marriage, which harmed her. We also acknowledge that during the COVID-19 pandemic, she experienced increased worries related to living in another country and about her medical and emotional wellness if she is forced to live abroad. As the Director noted however, while there is ample documentation demonstrating that the Applicant has received medical attention in the past, there is no documentation provided to show that she is receiving ongoing psychiatric, medical or fertility treatments.

We also acknowledge the evidence regarding country conditions in the Applicant's home country of Ecuador, which speaks to the issues of crime, civil unrest, and poor health care infrastructure. We further acknowledge that the Applicant likely has a strong work history in the United States as a chef. However, we note that of the twelve years of taxes provided, only one year (2018) showed taxable income above $5,000. Furthermore, while the Applicant's wife has stopped working during the COVID-19 pandemic, the Applicant has not shown she is unable to work to provide for herself. No evidence was provided to show that she would not be able to find employment overseas. We note too that because she speaks Spanish, is in her early thirties, and because she has a degree in marketing, there is little reason to doubt she would be capable of finding employment abroad.

The Director's denial highlighted that the record did not contain sufficient documentary evidence to support the Applicant's spouse's financial and medical hardship claims. We agree. In arriving at that conclusion, the Director noted that the Applicant's family ties were after-acquired equities, meaning he met his wife after entering the United States unlawfully. Again, favorable factors ("equities") acquired after an order of deportation, exclusion, or removal has been entered may be given less weight in assessing favorable factors in the exercise of discretion. *See Garcia- Lopes v. INS*, 923 F.2d 72 at 74; *Carnalla-Munoz v. INS*, 627 F.2d 1004 at 1007. We also find that because the Applicant's spouse does not appear to have significant family, community, religious or other ties to the United States, other than to the Applicant himself, we do not find that significant hardship to the Applicant's spouse if she is required to leave the United States has been established.

On appeal, the Applicant cites to a nonprecedent decision from our office to draw comparisons to his case. However, unpublished AAO decisions carry no precedential value. Additionally, appeals of denials of Form I-212 applications are determined on a case-by-case basis based on the facts and circumstances involved in each particular appeal.

In sum, we agree with the Director that when viewing the totality of the circumstances, the Applicant has not established that the favorable factors in his application outweigh the unfavorable ones. In addition, and as noted earlier, because the Applicant failed to attend his removal proceedings, he was ordered removed *in absentia*, and is likely inadmissible under another ground.[2] Therefore, a favorable exercise of discretion is not warranted, and the application will remain denied as a matter of discretion.[3]

III. CONCLUSION

The Director did not err in denying the Applicant's Form I-212, application for permission to reapply for admission as a matter of discretion, and it will therefore remain denied.

ORDER: The appeal is dismissed.

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[2] *See* FN 1.

[3] Although the Director did not make any determination with respect to the Applicant's inadmissibility under section 212(a)(6)(B) of the Act for failing to attend his removal proceedings without reasonable cause, we note that this is a separate reason to deny his application for permission to reapply for admission because there is no waiver for section 212(a)(6)(B) inadmissibility. Although there is no statutory definition of what the term "reasonable cause" means as it is used in section 212(a)(6)(B) of the Act, guiding USCIS policy provides that "it is something not within the reasonable control of the alien." Here, there is no evidence to explain what caused the Applicant to fail to attend his removal proceedings. Therefore, once he departs, it is likely he will be inadmissibility for five years under section 212(a)(6)(B) of the Act. As such, although the Director did not deny his application for permission to reapply for admission on this basis, we nonetheless point it out because it is a separate reason for dismissing his appeal.

An application for permission to reapply for admission is denied, in the exercise of discretion, to a noncitizen who is mandatorily inadmissible to the United States under another section of the Act. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964). Here, approving the Form I-212 would serve no purpose as the Applicant would likely remain inadmissible under section 212(a)(6)(B) of the Act for a period of five years. As the Applicant will become inadmissible upon his departure under section 212(a)(6)(B) of the Act, and there is no waiver available for this ground of inadmissibility, his application for permission to reapply for admission will remain denied as a matter of discretion.