U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22727045

Date: OCT. 3, 2022

Appeal of Detroit, Michigan Field Office Decision

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

The Applicant, who has an outstanding removal order, 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 Detroit, Michigan Field Office denied the Form I-212, concluding that the Applicant did not establish a favorable exercise was warranted in his case.

On appeal, the Applicant submits a brief and additional evidence. He asserts that the Director erred and that he has met his burden of proof.

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 because the Applicant has not met this burden.

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 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).

Generally, favorable factors that came into existence after a noncitizen has been ordered removed from the United States ("after-acquired equities") 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 is currently in the United States and seeks permission to reapply for admission so that he can adjust his status. He does not contest that he is inadmissible under section 212(a)(9)(A)(ii) of the Act for having been previously ordered removed. The Director denied his application for permission to reapply for admission because he failed to establish that the unfavorable factors were outweighed by the favorable factors. Specifically, the Director weighed the Applicant's criminal convictions, arrest history, and immigration violations against country conditions in Gambia as well as his family ties in the United States.

On appeal, the Applicant argues that the Director erred as a matter of fact and law, and that he has met his burden. According to the Applicant, the Director erred as a matter of fact because the decision attributed the Applicant's statements that he had never been arrested or violated any law as a fact. On appeal, the Applicant explains that he committed an inadvertent misstatement, and that he meant to state that he had been a law-abiding citizen *for the last ten years* and has no criminal history anywhere *for the last ten years*. While we acknowledge that the Applicant may have committed an inadvertent misstatement, the Director did not err when attributing the Applicant's own words to him. In addition, because of the discretionary nature of this application, the Director correctly pointed out the discrepancy in the Applicant's statement, because it appeared to be downplaying his criminal history.

On appeal, the Applicant also argues that the Director erred when reciting the Applicant's criminal history. The Director stated that the Applicant was convicted of two counts of having committed embezzlement under Mich. Comp. Laws Ann. § 750.174(4)(a) (West 2022). The Applicant argues that he was convicted of one count of embezzlement under this statute, and not two, which is correct. However, we consider the Director's misstatement to have been harmless error because, as we will explain later in the decision, while the Applicant only received one sentence, that single sentence was the result of two separate acts of embezzlement.

We have reviewed the entire record, including the additional evidence submitted on appeal, and for the reasons explained below conclude that it is still insufficient to establish that a favorable exercise of discretion is warranted.

The record reflects that the Applicant entered the United States in F-1 status April 1995 but never attended school. He attributes this to not having the financial support he expected when he entered

the United States. In January 1996, he married a U.S. citizen. Together, they had a daughter in [redacted] 1996, and his wife had three other children from prior relationships who they were raising together. According to court transcripts of his immigration removal proceedings, the Applicant and his wife struggled financially. They divorced in [redacted] 2016.

The Applicant's criminal history stems from two incidents, which took place on [redacted], 1998 and [redacted], 1998. He was arrested and charged with embezzlement under the aforementioned criminal statute for these two separate incidents. On [redacted] 2002, the Applicant pled guilty and was sentenced to one month of jail and five years of probation, and ordered to pay victim's fees, restitution, and attorney's fees. In [redacted] 2007, the Michigan court released him from probation and ordered him to continue to make $200 monthly installment payments of restitution.

As a result of his conviction and because he violated the terms of his student visa entry, removal proceedings commenced on [redacted] 2003, and he was ordered removed on [redacted] 2003. He appealed the Immigration Court's decision, which the Board of Immigration Appeals dismissed in October 2004. In [redacted] 2003, he was released from detention and placed on an order of supervision. In [redacted] 2006, he was taken off the supervised release program because he failed to comply with its terms. In 2008 and 2010, the Applicant committed several traffic violations resulting, once again, in his immigration detention. These violations included running a red light, driving without proof of insurance, and driving with a suspended license. In [redacted] 2010, he was released from immigration detention and again placed under an order of supervision.[1]

In denying the Form I-212, the Director acknowledged the Applicant's family ties in the United States, and that country conditions in the Applicant's home country may not be favorable to him and that he may suffer unemployment. Nevertheless, the Director determined that the evidence was inadequate to establish the extent to which the Applicant's departure might impact his daughter and grandchild. For example, the Director pointed out that his daughter's statement contained inconsistencies and that it was prepared two years prior to the filing of this application. The Director also pointed out that although his daughter's statement mentioned the Applicant had been deported around the time her son was born, our records do not reflect that the Applicant was ever deported. No explanation was provided for this discrepancy. The Director concluded that the lack of credible evidence was insufficient to warrant a favorable exercise of discretion.

On appeal, the Applicant provides a brief, an updated letter from his daughter, records related to his criminal matters, a statement explaining his misstatements, a certificate received for his training in machining, a good character letter from his home country's police force dated August 29, 2019, two letters dated 2004 from his instructors commending the Applicant's work ethic and performance, and his 2017 personal income tax showing an income of $28,238. He filed his 2017 tax return as a single individual, and listed no dependents.

The positive factors in his case are the Applicant's U.S. citizen daughter and grandson, his past history of paying taxes in 2017, and training and work letters from 2004. The Applicant states that he will

[1] Government records indicate the Applicant may have relocated to Canada in 2017. If he did, this appeal would be moot because he would have executed his removal order. However, there is no confirmation of his departure, and it appears he is residing in the United States.

suffer if he returns to the Gambia because he will not be able to see them. He also claims that his daughter and grandson will suffer if he returns to the Gambia because he will not be able to support them because he will not find a job. He argues that the Gambia's "harsh environmental climate" and the prevalence of "tropical diseases" will pose a risk to his daughter and grandson if they relocate there with him. The Applicant describes his daughter's limited income and explains that together they are able to support each other's financial needs, but that in the Gambia, he will be left unemployed. He claims that leaving his daughter and grandson, or them moving to the Gambia with him, would result in them experiencing emotional and financial hardship. We acknowledge the submitted country reports for the Gambia and recognize that the Applicant may experience emotional and financial difficulties if he must remain there for the entire inadmissibility period. However, we note that the Applicant lived in the Gambia until he was 22 years old, and he appears to have acquired marketable skills.

The record does not include sufficient information to establish the Applicant's claimed hardships. For example, while we understand he has a bond with his daughter and grandson, which is substantiated in the record, there is insufficient evidence to show that he financially supports his daughter, or that they live together. As noted above, his 2017 tax return lists no dependents. He did not provide updated employment verification to show where he is currently working. Moreover, his daughter's statement does not include any details about how the Applicant financially supports her other than stating in vague terms that her father has always been there for her. Furthermore, because she claims to be graduating from a nursing program and engaged to marry, it appears she does not rely on him for financial support. Moreover, it remains unclear why she believes the Applicant was deported from the United States, and this unexplained discrepancy undermines the Applicant's claim that they share a close bond.[2]

The negative factors in his case include his criminal history, significant immigration violations including his violation of his student visa, and his violation of the terms of his orders of supervision.

Thus, the evidence considered in its totality is still insufficient to show the extent of the claimed emotional, and economic hardship to the Applicant and his daughter that would result from his absence. Moreover, we agree with the Director that such hardship does not outweigh, in this discretionary analysis, the Applicant's criminal and immigration violations.

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.

[2] As noted, government records indicate the Applicant may have left the United States on his own in 2017. However his daughter's statement does not reflect that she knew any details about the reasons why he left the United States.