U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22476880

Date: OCT. 4, 2022

Appeal of St. Thomas, U.S. Virgin Islands Field Office Decision

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

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

The Director of the St. Thomas, U.S. Virgin Islands Field Office denied the application as a matter of discretion, concluding that the negative factors in this case outweigh the equities. The matter is now before us on appeal. In the appeal, the Applicant submits a brief and states that the Director erred by concluding that the negative factors in this case outweigh the equities.

In these proceedings, it is the Applicant's burden 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). 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)(A)(ii) of the Act provides that any noncitizen, other than an "arriving alien" described in section 212(a)(9)(A)(i), 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 an alien 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 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. *See 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. *See Matter of Tin,* 14 I&N Dec. 371 (Reg'l Comm'r 1973); *see also Matter of Lee*, *supra*, at 278 (finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character, and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience").

The Applicant currently resides in the United States and is seeking conditional approval of her application under the regulation at 8 C.F.R. § 212.2(j) before departing the United States to apply for an immigrant visa. The approval of the application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if she fails to depart

II. ANALYSIS

The Applicant does not dispute her inadmissibility. The record establishes that the Applicant entered the United States in 1997 and, in 1999, an Immigration Judge (IJ) ordered her removed. Despite having been ordered removed from the United States, the Applicant has remained in the United States for more than 20 years thereafter. Therefore, the Applicant will trigger inadmissibility under section 212(a)(9)(A)(ii) of the Act upon her departure. Accordingly, we limit our analysis to whether approval of the application is warranted as a matter of discretion.

The Director acknowledged equities in this case, including the Applicant's length of residence in the United States, her "personal and economic ties to [her spouse]," and that "[a]side from [the Applicant's] legal immigration status and unlawful employment, [she has] remained in the U.S. and abided by its law for more than 20 years." However, the Director concluded that the negative factors in this case outweigh the equities. The Director observed that the Applicant has a "history of circumventing U.S. [immigration] laws with the help of [her] husband." Specifically, the Director asserted that the Applicant's spouse "misrepresented [her] immigration status to USCIS in an attempt to obtain employment authorization for [her]."

On appeal, the Applicant asserts that the Director did not properly examine and weigh the evidence in the record.[1] Specifically, the Applicant states that the Director did not explain why the documents were insufficient to meet the burden of proof.

Upon review of the record, we conclude that the Director's decision does not reflect a proper analysis of the favorable and unfavorable factors in the Applicant's case, as required. For example, the Director stated that the Applicant's spouse misrepresented the Applicant's immigration status, but we conclude that the Director is incorrect.

[1] The Applicant also asserts that the application was erroneously transferred to the St. Thomas, U.S. Virgin Islands Field Office, when the Applicant lives in [redacted] Texas. However, the U.S. Citizenship and Immigration Services (USCIS) website indicates that USCIS may move applications to process applications faster. *See* USCIS, *Field Offices*, https://www.uscis.gov/about-us/find-a-uscis-office/field-offices (last visited Oct. 4, 2022).

Specifically, in 2001, the Applicant's spouse, who was then an owner of a retail clothing store and not yet married to the Applicant (they married in 2019), filed a Form I-140, Immigrant Petition for Alien Worker, on behalf of the Applicant. The Form I-140 indicated that the Applicant's "current nonimmigrant status" was "asylum" but the Applicant's application for asylum had been denied in the 1999. Upon issuance of a request for evidence, the Applicant's spouse abandoned the petition, leading to its denial.

However, the Applicant's spouse did not sign the Form I-140; instead, the attorney who prepared the Form I-140 signed it, attesting that "it is based on all information of which [the attorney had] knowledge," not directly connecting the misrepresentation to either the Applicant or her future spouse.[2]

Because the attorney who prepared the Form I-140, not the Applicant or her spouse, signed the immigration benefit request and attested to its veracity, we withdraw the Director's statement that "[the Applicant's spouse] misrepresented [the Applicant's] immigration status to USCIS in an attempt to obtain employment authorization for [her]." We further withdraw the Director's statements that "[the Applicant's spouse] has knowingly helped [the Applicant] violate immigration law" and that the Applicant has a "history of circumventing U.S. laws with the help of [her spouse]" because the Director did not identify other instances where the Applicant's spouse violated or helped to circumvent immigration or U.S. law.

On appeal, the Applicant asserts that she and the owner of the retail store that filed the above-mentioned-Form I-140 petition, "fell in love and married . . . several years after this I-140 filing." The Applicant also asserts that she is "the only mother her stepdaughter . . . has and is very active in her upbringing." The Applicant adds that she and her spouse "have built two successful businesses in [redacted] Texas, which Applicant manages on a daily basis." The Applicant further asserts that she "has no criminal record in the U.S. or overseas and has repeatedly attempted to legalize her status in the U.S. through the appropriate channels," including a Form I-130, Petition for Alien Relative, approved in 2020, and a Form I-485, Application to Register Permanent Residence or Adjust Status, denied in 2020.

The record contains a marriage license, indicating that the Applicant married her spouse, a naturalized U.S. citizen, in [redacted] 2019, 20 years after an IJ ordered the Applicant removed from the United States. The record also establishes that the Applicant's stepdaughter was born in [redacted] 2004; therefore, the Applicant's stepdaughter is now an adult of the age of 18. The record further establishes that the Applicant's spouse divorced his prior wife in 2013, and that the divorced parents shared parenting of the Applicant's stepdaughter until approximately 2017.

Equities acquired after a removal order has been entered bear diminished weight. *See Garcia Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991); *see also Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980). We note that after-acquired equities in this case include the following: the Applicant's marriage to her spouse 20 years after an IJ ordered her removed; the Applicant's relationship with her

[2] The version of the Form I-140 in the record is OMB No. 1115-0061 (Rev. 09/26/00). The attorney who prepared the form signed Part 9, "Signature of person preparing form, if other than above." Part 8, the field for the "Petitioner's Signature," is blank.

stepdaughter; the Applicant's involvement with managing two businesses in the area of [redacted] Texas, with her spouse.

In light of the deficiencies noted above and considering the new evidence submitted on appeal, we find it appropriate to remand the matter to the Director to determine whether the negative factors in this case outweigh the favorable factors, including after-acquired equities, and 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.