U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22395061

Date: SEP. 16, 2022

Appeal of U.S. Customs and Border Protection Admissibility Review Office Decision

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

The Applicant, a citizen of Canada, 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). He was found inadmissible to the United States under section 212(a)(9)(A)(i) for having been previously ordered removed, 212(a)(6)(C)(i) for willful misrepresentation, and 212(a)(2)(A)(i)(I) for crime involving moral turpitude convictions. The Director of the U.S. Customs and Border Protection (CBP) Admissibility Review Office denied the Applicant's Form I-212, as a matter of discretion, concluding that the unfavorable factors outweighed the favorable factors.

On appeal, the Applicant submits new evidence and asserts the record establishes his case merits approval as a matter of discretion. We review the questions raised in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(i) of the Act states that any noncitizen who has been previously ordered removed as an arriving alien, and who seeks admission again within five years of the date of that removal (or within 20 years in the case of a second or subsequent removal) 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) of the Act 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 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. *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 a Form I-212 application 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).

II. ANALYSIS

In addition to his Form I-212, the Applicant submitted a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, to CBP seeking a waiver of his inadmissibility for his crime involving moral turpitude convictions, willful misrepresentation of a material fact, and having been previously ordered removed. *See* Section 212(a)(2)(A)(i)(I), (6)(C)(i), and (9)(A)(i)(I) of the Act. CBP denied the Form I-192 application.[1] As the Applicant is inadmissible to the United States under another section of the Act, no purpose would be served in granting the Form I-212 application in the exercise of discretion. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964). We will therefore dismiss his appeal of the denial of his Form I-212 application as a matter of discretion.

We further conclude that even if the Applicant's Form I-192 were granted, we would nonetheless dismiss the appeal of his Form I-212 application denial as a matter of discretion because he has not demonstrated that he merits approval. The record reflects that the Applicant applied for admission to the United States in 1993, was questioned about his criminal record in Canada, and claimed the charges related to a cousin with the same name. CBP officers confirmed the Applicant's fingerprints matched the criminal record in Canada, he was referred for a hearing before an immigration judge, and was ordered excluded and deported *in absentia*. In 2008, the Applicant applied for admission to the United States. Following an inspection of the Applicant's vehicle, the CBP officers determined he was inadmissible to the United States as an immigrant without documents and was refused admission. In 2009, the Applicant applied for admission as a truck driver. CBP officers performed an inspection of the Applicant's vehicle and found documents related to travel, work, residential, and financial activity in the United States. After the Applicant provided a sworn statement pertaining to his deliveries and pickups in the United States, the officers determined he was inadmissible to the United States as an immigrant without documents, issued an expedited removal order, and revoked his previously approved inadmissibility waiver. In 2013, the Applicant was granted consent to reapply for admission and a new waiver of inadmissibility was granted in 2014 with a validity period of five years.

In [redacted] 2017, the Applicant applied for admission as a commercial truck driver. CBP officers performed an inspection of the Applicant's vehicle and found documentation listing him as the driver of a truck for multiple deliveries within the United States on behalf of a U.S. carrier in February and March 2017. The Applicant provided a sworn statement where he claimed that he had not made any point-to-point deliveries within the United States since 1994, and that though the paperwork showed his truck made the deliveries, he did not remember it and coworkers may have used his truck. The officers determined the Applicant was inadmissible to the United States as an immigrant without documents and for fraud and/or willful misrepresentation regarding unauthorized and documented point-to-point deliveries within the United States, issued a second expedited removal order, and revoked his previously approved inadmissibility waiver.

In support of the instant Form I-212, the Applicant submitted reference letters and a personal statement indicating that his reason for travel to the United States is to attend business meetings, drive his

[1] The record indicates the Applicant's appeal with the Board of Immigration Appeals is currently pending.

commercial truck to and from the United States, oversee loading and unloading in connection to his logistics coordinator projects, and vacation. The Applicant stated that his previous waivers were revoked in 2009 and 2017 due to suspected interstate transport of U.S. goods. He claimed that in 2009, a CBP officer found his cell phone bill in the truck and accused him of illegally living and working within the United States without proper approval because the bill was issued to a U.S. address. The Applicant contended that he had the bills sent to a friend's address because it was cheaper to have an American cell phone but he could not use his Canadian address. Regarding the [redacted] 2017 removal, the Applicant stated that though he told the CBP officer he last crossed the border earlier the same month, the officer told him the computer indicated it was months prior and therefore he overstayed his nonimmigrant B1 visitor visa. The Applicant told the officer that he only overstayed his visa by a couple days due to his truck breaking down, but the officer concluded he was working illegally in the United States because vehicle logs were found in the truck showing point-to-point trips in the United States.

In denying the Form I-212, CBP determined that the unfavorable factors, specifically the recency of removal, the Applicant's moral character and respect for law and order, and inadmissibility to the United States, outweighed the favorable factors. CBP noted that the Applicant's last immigration violation occurred in [redacted] 2017 and he is currently barred from seeking admission to the United States until [redacted] 2037 due to his second removal order. CBP indicated that while the Applicant's last criminal conviction was over 30 years ago, his immigration history shows a pattern of disregard for immigration laws, repeated unauthorized hauling of goods, and deliberate misrepresentation of material facts to CBP officers in order to gain admission into the United States. Further, the Applicant's statement did not reflect personal responsibility for his actions or remorse for his behavior. CBP noted that the record contains insufficient evidence of a need for his services in the United States or hardship to the Applicant or others if his request were denied.

On appeal, the Applicant states that he would like to visit friends in the United States and intends to renew his lease contract with C-L-[2] on a part-time basis to haul freight to and from Canada. He contends his previous lawyer was misinformed about his case and did not fully represent him; he never lived or worked illegally in the United States; and his two removals stem from one time in the 1990's when he mistakenly hauled a load of hay within the United States. The Applicant indicates that he was questioned by CBP officers during that incident and accepted his punishment. Concerning the 2009 removal order, he contends that although a CPB officer charged him with illegally working in the United States because a phone bill addressed to a U.S. residence was found in his truck during the 2009 inspection, he was helping a friend with bad credit by putting cable, phone, and internet bills in his own name. He also asserts that he had phone bills sent to a friend's address because it was cheaper to have an American cell phone but he could not use his Canadian address. Regarding the 2017 incident, the Applicant asserts that he explained to a CBP officer that his Form I-94, Arrival/Departure Record, was expired due to a truck breakdown and provided receipts as evidence. He contends that the officer told him a computer indicated his last entry into the United States was months earlier and that he was a liar when he said that he last entered the United States on [redacted] 2017; then, the

[2] Initials are used to protect the identity of individuals and entities.

officer searched the Applicant's truck and came up with a narrative about him and his activities. The Applicant further states that he has shown no remorse because he has not done anything illegal.

He submits on appeal a letter from the president of the U.S.-based company, C-L-, who states that the Applicant is leased to them as an owner operator and logistics coordinator; he has not hauled freight within the United States; on a few occasions he has let other drivers use his truck; any load that his truck hauls, even by other drivers, is recorded as his load; and the company is anxiously awaiting his return. The Applicant also provides letters from coworkers stating that the Applicant allowed them to use his truck and trailer many times, sometimes he would ride with them, and he would only drive the truck when it was empty.

Upon *de novo* review, the record supports CBP's finding that the favorable factors in this case do not outweigh the unfavorable factors. As such, we find that approval of the application is not warranted as a matter of discretion. *See Matter of Lee*, 17 I&N Dec. at 278-79. The positive factors in this case include the need for the Applicant's services in the United States, as noted in the letter submitted by the president of the U.S.-based company, C-L-. Concerning hardship to the Applicant, while we acknowledge his personal statement that he would like to visit friends he has known over 35 years and continue his work with C-L-, the record lacks additional evidence or information concerning any claimed hardship to the Applicant or others.

The evidence submitted on appeal, specifically the Applicant's personal statement, support letters, and a letter from the C-L- president, do not overcome the deficiencies noted by CBP. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, the record does not contain evidence to support the coworkers' and the C-L- president's assertions regarding the use of the Applicant's truck by other individuals and, moreover, the Applicant has not provided sufficient documentation to support his claim that he did not misrepresent his work and residential history in the United States, that he has never lived or worked illegally in the United States, or that CBP erred in their inadmissibility determinations. We note, for example, in regard to the 2009 and 2017 inspections and removal orders, the Applicant claimed in his initial personal statement that the "officers manipulated their findings to fit their narrative." Similarly, the Applicant argues on appeal that at the time of the [redacted] 2017 incident, a CBP officer called him a liar when he said he last entered the United States earlier the same month and then "came up with a narrative" about the Applicant after searching his truck. However, the Applicant initially stated that the officer concluded he was working illegally in the United States because vehicle logs were found in the truck showing point-to-point trips in the United States.

A significant unfavorable factor is the Applicant's attempts to minimize the seriousness of his deliberate misrepresentation of material facts to CBP officers in order to gain admission into the United States and his repeated disregard for immigration laws. He has not demonstrated that he accepts full responsibility for his actions, stating on appeal that he has shown no remorse because he has not done anything illegal and claiming that both of his removals "were based on the officers[']' reading of my file." We further note the recency of the Applicant's removal in [redacted] 2017, especially in light of the fact that he is currently barred from seeking admission to the United States until [redacted] 2037 due to his second removal order. Because the unfavorable factors outweigh the favorable factors in this case, the Applicant has not established by a preponderance of the evidence

that approval of the application is warranted as a matter of discretion. *See Matter of Tin*, 14 I&N Dec. at 373-74.

III. CONCLUSION

As discussed, CBP denied the Applicant's Form I-192 application. As the Applicant remains inadmissible to the United States under section 212(a)(2)(A)(i)(I), (6)(C)(i), and (9)(A)(i)(I) of the Act, no purpose would be served in granting the Form I-212 application. We will therefore dismiss his appeal of the Form I-212 application denial as a matter of discretion. *See Matter of Martinez-Torres*, 10 I&N Dec. at 776-77.

Notwithstanding the Applicant's pending appeal with the Board, we further conclude that the Applicant has not established he merits approval of his Form I-212 because the favorable factors in this matter do not outweigh the unfavorable ones. We will therefore dismiss his appeal of the Form I-212 denial as he has not demonstrated that the application should be granted in the exercise of discretion.

ORDER: The appeal is dismissed.