U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27156612

Date: AUG. 14, 2023

Appeal of Detroit, Michigan Field Office Decision

Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal

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), for having been ordered removed. *See* section 212(a)(9)(A)(ii) of the Act. The Director of the Detroit, Michigan Field Office denied the application, concluding that the Applicant did not establish a favorable exercise of discretion was warranted in his case. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions 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.

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, other than an "arriving alien," who has been ordered removed under section 240 of the Act, 8 U.S.C. § 1229a, or any other provision of law, or who 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 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 contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

The Applicant currently resides in the United States, and he is seeking conditional approval of his application under the regulation at 8 C.F.R. § 212.2(j). The approval of his application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if he fails to depart.

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, are given less weight in a discretionary determination. *See Garcia-Lopes v. INS*, 923 F.2d 72, 74 (7th Cir. 1991) (explaining that 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) (finding that 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).

The Applicant does not contest his inadmissibility, which is supported by the record. On appeal, the Applicant asserts that the Director did not give sufficient weight to the positive equities in his case. He again asserts that he has extensive community and family ties in the United States and presents no threat or harm to society. Further, the Applicant maintains that he runs a business with his family and is a hardworking individual.

In the decision to deny the application, the Director considered evidence of the favorable factors in the Applicant's case, including: letters of support from family members, letters from the Applicant's social worker and probation officer, pictures of the Applicant's family, and pictures and a description of the Applicant's family business. The Director further noted the Applicant had educated himself, has a family in the United States, and works for his family business.

Regarding unfavorable factors, the Director detailed the serious factors in the Applicant's case. Specifically, the Applicant has a criminal history in the United States, including: three felony drug convictions from 2011; multiple misdemeanor convictions for driving without a license; and a 2019 conviction for Obstructing Official Business, which notably occurred after the entry of the Applicant's removal order.

After considering the record in its entirety, including documents submitted on appeal, the record continues to be insufficient to show that a favorable exercise of discretion is warranted. Accordingly, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case."). Although we are sympathetic to the Applicant and his family's circumstances and the favorable factors detailed by the Director, the positive factors, many of which came into existence after the issuance of the Applicant's removal order, do not outweigh the significant negative factors in this case.

The Applicant has not shown the Director incorrectly balanced the positive and negative factors in his case. 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.