



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 27190179

Date: JUL. 12, 2023

Appeal of New York, New York 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), because she is inadmissible for having been previously ordered removed. *See* section 212(a)(9)(A)(ii) of the Act.

The Director of the New York, New York Field Office denied the application, concluding that the Applicant did not establish that a favorable exercise of discretion was warranted in her case. On appeal, the Applicant does not contest inadmissibility, which is supported by the record. Rather, she submits additional documentation and contends that the Director did not properly weigh the favorable factors against the unfavorable factors in her case.

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, as explained below, we will remand the matter to the Director for the entry of a new decision.

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 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 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); *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 is a native and citizen of Bangladesh who entered the United States in March 2014 as a parolee, with permission to remain until June 2, 2014. The Applicant did not depart the United States pursuant to the terms and conditions of her parole authorization; rather, she remained in the United States and applied for asylum. While her asylum application was pending, the Applicant returned to Bangladesh. The Applicant was ordered removed *in absentia* on [REDACTED] 2017. The issue presented on appeal is whether the Applicant should be granted approval of her application for permission to reapply in the exercise of discretion. After considering the record in its entirety, including documents submitted on appeal, we find that the matter should be remanded to the Director for the entry of a new decision.

In the decision to deny the application, the Director referenced the Applicant's unfavorable factors, including the *in absentia* removal order, the Applicant's periods of unlawful presence in the United States, and the Applicant's abandonment of her asylum application "by leaving the United States and return[ing] to the country you claimed the basis for your filing" thereby "undermin[ing] the legitimacy of your asylum claim." Regarding favorable factors, the Director acknowledged the Applicant's marriage certificate, her passport, the Applicant's affidavit in support of the application, affidavits from the Applicant's daughter and friends, medical and mental health documentation, and a police clearance letter. However, the Director determined that the record did not establish that the Applicant's spouse would experience hardship were he to remain in the United States without the Applicant because the record indicated that he is able to work and his "medical condition is not life threatening and he is being treated by medical professionals."<sup>1</sup> The Director concluded that the favorable factors did not outweigh the unfavorable factors in the Applicant's case and denied the application accordingly.

On appeal, the Applicant provides a statement explaining why she departed the United States in 2017 while her asylum application was pending. She contends that she decided to return to Bangladesh in September 2017 "because of stress and anxiety caused by the fact" that she had not seen her children in over three years. She further explains that since returning to Bangladesh, she lives with her daughter and her family but due to her fears of being seen by "the Awami League members, who were the very reason I filed for asylum," she never leaves her daughter's home. Nor does she work, shop, go to her mosque, or visit any other places. The Applicant's daughter provides her own statement, corroborating the Applicant's contentions that she never leaves her home due to fears of being seen by "Awami League" members.

---

<sup>1</sup> Hardship to a qualifying relative is not a requirement when conducting a discretionary analysis for purposes of permission to reapply for admission; it is a favorable factor that may be considered.

We find that the Director did not address the evidence of additional significant favorable factors in the record, including hardships to the Applicant. The record before the Director contained documentation of the Applicant's family ties in the United States, including her spouse. The Applicant also submitted a statement detailing the hardships she encountered having to leave her children in Bangladesh for the first time in 2014, and the emotional hardships she experienced as a result. The Applicant also detailed the medical hardships her spouse is experiencing as a result of long-term separation from her, which in turn are causing her hardship.

In support of her statement, the Applicant submitted documentation to establish that she sought medical treatment in the United States as a result of the emotional duress she was feeling due to long-term separation from her children. The record also contains letters in support of the Applicant from her daughter and family friends attesting to the hardships the Applicant experienced when she came to the United States as a result of being separated from her children and the hardships the Applicant is experiencing as a result of her return to Bangladesh, including fears for her life and emotional distress as a result of long-term separation from her spouse.

The Applicant also submitted a psychosocial/family assessment establishing the hardships her spouse is experiencing as a result of long-term separation from the Applicant; the assessment also details that the Applicant's spouse was granted asylum<sup>2</sup> in the United States and he is thus fearful of ever returning to his native country. The Applicant also submitted a letter from her spouse's treating physician detailing his "multiple chronic diseases," his need for continued monitoring and treatment, the hardships he is experiencing having to care for himself, and the benefits he would receive from having his wife's daily presence and support. The record also establishes the Applicant's apparent lack of a criminal record. We also note that after the instant appeal was filed, the Applicant's Form I-730, Refugee/Asylee Relative Petition, was approved.

Considering the documentation submitted on appeal, and because the Director's decision did not appear to properly weigh all the positive factors in the Applicant's case, we find it appropriate to remand the matter for the Director to reevaluate the record in its entirety, including the documentation submitted on appeal, to determine whether the Applicant has established that she merits 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.

---

<sup>2</sup> The record indicates that the Applicant's spouse was granted asylum status in June 2019.