



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

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

In Re: 26183205

Date: MAY 10, 2023

Appeal of Houston, Texas 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 he will be inadmissible upon departing from the United States for having been previously ordered removed. *See* section 212(a)(9)(A)(ii) of the Act.

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

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) before departing the United States to apply for an immigrant visa. 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); 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 Honduras who entered the United without authorization in 2002. In 2012, the Applicant was placed in removal proceedings. The Applicant applied for relief from removal but in [REDACTED] 2018, he was ordered removed to Honduras. The record indicates that the Applicant has not departed the United States to date. The issue presented on appeal is whether the Applicant should be granted conditional approval of his 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 his violation of immigration laws, his failure to comply with the removal order from the immigration judge, and his unlawful acts as evidenced by his two arrests in 2007 for driving under the influence. Regarding favorable factors, the Director acknowledged the Applicant's family ties in the United States, including his lawful permanent resident spouse and two U.S. citizen children, and his claim that they would suffer hardships if they were to remain in the United States while he relocated abroad. The Director also referenced the Applicant's claim that his spouse and children would experience hardship were they to relocate to Honduras with the Applicant. However, the Director determined that "exceptional and extremely unusual hardship" had not been established. The application was denied accordingly.

We find that the Director erred in considering whether the Applicant had established "exceptional and extremely unusual hardship" because said standard is not a requirement when conducting a discretionary analysis for purposes of permission to reapply for admission.¹ The Director also 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 plumbing license; home ownership; approved Form I-130 on the Applicant's behalf; the payment of taxes; the Applicant's gainful employment in the United States; letters in support of the Applicant attesting to his honesty, dependability, and dedication to his work and family; and information about the problematic country conditions in Honduras. In addition, on appeal the Applicant submits an affidavit detailing the hardships he and his family would experience were he unable to remain in the United States, an affidavit from his spouse regarding hardships to her and her family if the Applicant were to

¹ Nor is "extreme" hardship to a qualifying relative a requirement when conducting a discretionary analysis for purposes of permission to reapply for admission

relocate abroad, additional evidence of the payment of taxes, medical and mental health documentation pertaining to his spouse, photographs of the Applicant and his family, and additional information about the problematic country conditions in Honduras.

In his affidavit submitted on appeal, the Applicant states that he has lived in the United States for over 20 years and owns a home in the United States. The Applicant also details that his children are young, born in 2009 and 2015, and he does not want them to live without a father. The Applicant also indicates that he is the primary financial provider for his family as a result of his work as a plumber and were he to relocate abroad, his spouse would not be able to manage their financial responsibilities on her own, thereby causing him hardship. The Applicant also states that he would experience hardship were he to return to Honduras due to the problematic country conditions, including violent crime and gang activity. On appeal, the Applicant also addresses his DUI arrests in 2007 and expresses remorse for his actions; he maintains that he has been sober for over 15 years, has not had any other encounters with law enforcement since 2007, and is thereby rehabilitated.

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 extensive documentation submitted on appeal, to determine whether the Applicant has established that he 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.