U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24993696

Date: MAY 23, 2023

Motion on Administrative Appeals Office Decision

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

The Applicant will be inadmissible upon departing the United States for having been previously ordered removed. He seeks advance 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), which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion.

The Director of the Los Angeles, California Field Office denied the Form I-212, concluding that the Applicant did not establish a favorable exercise was warranted in his case, and we dismissed a subsequent appeal on the same ground. The matter is now before us on a combined motion to reopen and reconsider. The Applicant submits supplemental evidence and renews his request for permission to reapply for admission to the United States.

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). Upon review, we will dismiss the motions.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider must show that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services' (USCIS) policy to the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(2)-(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit; however, a motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

As previously discussed, 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).

II. ANALYSIS

In our previous decision, which we incorporate here by reference, we recognized the favorable factors in the Applicant's case, including his lawful entry as a nonimmigrant visitor in 2011, longtime residence in the United States, apparent lack of criminal history, 2013-2014 employment with the [redacted] Ballet, work as a dance teacher at a performing arts foundation in California, and marriage to a U.S. citizen. Nevertheless, we concluded that the weight of those seemingly positive equities was diminished by the fact that the Applicant did not comply with the removal order, that his residence and employment in the United States were unauthorized, and that his marriage occurred in 2016, after he had been ordered removed from the United States. We also determined that an Immigration Judge's adverse finding in asylum proceedings concerning the Applicant's credibility, as well as unresolved inconsistencies in the record concerning the merits of his asylum claim were additional negative factors that weighed against him. Lastly, although the Applicant claimed that his spouse would experience hardship if she were to follow him to China, we explained that because he did not provide specific details or supporting documentation, he did not show that hardship to his spouse was a significant factor weighing in his favor.

The Applicant now submits a letter confirming that he currently holds a position of artistic director at the performing arts foundation and oversees all the operations of the dance studio. He also submits evidence that he passed the American Ballet Theatre national training curriculum examinations in 2017 and 2020, two letters of recommendation (one from his student and one from a parent), copies of his 2018-2021 federal income tax returns, an online article on China's pattern of anti-U.S. hostility, and a 2021 opinion about the risk Americans face in travelling to China published on the CNN website.

As an initial matter, the Applicant does not identify any legal or USCIS policy errors in our prior decision, nor does he claim that the decision was otherwise incorrect based on the evidence in the record of proceedings at the time we dismissed his appeal. He therefore has not established a basis for us to reexamine our previous determination that he did not show he merits a grant of permission to reapply for admission in the exercise of discretion. Consequently, we must dismiss his motion to reconsider.

The Applicant also has not presented new facts sufficient to warrant reopening of these proceedings. While we acknowledge the submission of the supplemental evidence on motion, the record as a whole remains inadequate to establish that the positive factors in the Applicant's case (considered individually and cumulatively) outweigh the negative ones, and that his Form I-212 should be approved as a matter of discretion. Although the additional documentation is consistent with the Applicant's previous claims of employment as dance teacher and his accomplishments as a dancer, both of which we recognized as favorable considerations, they came into existence after the Applicant had been ordered removed from the United States and while he resided in country unlawfully and worked without authorization. As such, they have diminished weight in the discretionary analysis. We also acknowledge the articles describing incidents of hostility by the Chinese authorities towards foreign nationals, including citizens of the United States; however the Applicant is a citizen of China, and the record does not establish that the Chinese government will treat him differently than any other Chinese citizen if he must remain in China for the entire inadmissibility period. Furthermore, we previously acknowledged that the Applicant's spouse might face difficulties if she chooses to relocate to China with him, but explained that the Applicant's general statement that her hardship would be

"obvious" did not constitute a substantial factor in his favor. As the Applicant still does not explain what specific hardships his spouse will experience if he is not permitted to reapply for admission to the United States before the expiration of his inadmissibility period, he has not overcome that determination.

In conclusion, the Applicant has not established new facts sufficient to warrant reopening of the instant proceedings, nor has he demonstrated that our prior decision was based on an incorrect application of law or policy or that it was otherwise incorrect based on the evidence in the record of proceedings at the time of the decision. His appeal therefore remains dismissed, and his Form I-212 remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.