U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16427771

Date: APR. 14, 2022

Appeal of Philadelphia, Pennsylvania Field Office Decision

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

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.

The Director of the Philadelphia, Pennsylvania Field Office denied the application. The Director concluded that the Applicant did not establish that a favorable exercise of discretion was warranted.

The matter is now before us on appeal.[1] In the appeal, the Applicant states that the Director erred in giving undue weight to the unfavorable factors and not giving appropriate weight to the favorable factors present in his case, including his family ties to the United States, the hardship to his U.S. citizen relatives upon separation, and the significant health concerns of his spouse.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking permission to reapply for admission to the United States after having been previously ordered removed.

Section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), provides that any "arriving alien . . . who has been ordered removed under section 235(b)(1) [of the Act, 8 U.S.C. § 1225(b)(1),] or at the end of proceedings under section 240 [of the Act, 8 U.S.C. § 1229a,] initiated upon the arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible."

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any alien, other than an arriving alien described in section 212(a)(9)(A)(i), who "has been ordered removed . . . or departed

[1] The Applicant's representative that filed the application and this appeal has since been suspended from the practice of law.

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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible."

Foreign nationals 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) 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 foreign national'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 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 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. *See 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").

II. ANALYSIS

The Director notes that, upon his departure from the United States, the Applicant will be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), for having been previously ordered removed. He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States.

Applicant, a native and citizen of Trinidad and Tobago, first entered the United States in 1986 with a nonimmigrant B-1/B-2 visa issued under another name.[2] He remained in the United States. beyond his authorized period of stay, was apprehended in 1991, and placed in removal proceedings. In 1995 he was granted Voluntary Departure but, as he did not appear on his scheduled date of departure, a warrant of deportation was ordered. In 1996, the Applicant was located using the address he provided on an application to purchase a firearm. He was again apprehended and removed from the United States on [redacted] 1996.

[2] On appeal, the Applicant asserts that he was unaware that the name by which he was known at the time he applied for his visa, initials T. F., was not his legal name, as his passport was issued in this name and he believed this to be his name since birth. The Applicant states that he learned from his father that, during a dispute with his mother and without her knowledge, his father intentionally recorded another name on the birth certificate, initials K. S. The Applicant later located his birth certificate and was issued a passport under his current and legal name, initials K. S.

On August 29, 1997, the Applicant again entered the United States with a nonimmigrant B-1/B-2 visa issued under his current and legal name. He again overstayed his period of authorized stay and has since remained in the United States without authorization.

While in the United States the Applicant married a U.S. citizen in 2012. In 2017, his spouse filed Form I-130, Petition for Alien Relative, on his behalf. The Applicant's spouse withdrew this petition on November 7, 2018, after they failed to appear for a scheduled interview. There are currently no other applications or petitions, pending or approved, on behalf of the Applicant.

On the Form I-212, Application for Permission to Reapply for Admission, Part 3, Reasons For Your Request For Permission to Reapply, was left blank. The Applicant did not include an explanation of why he would like to reenter the United States, as requested in this section. In the cover letter accompanying Form I-212, the Applicant's representative identifies the Applicant's close family ties in the United States, the hardships his U.S. citizen spouse and daughter would experience in his absence, and his good moral character. He further states that the Applicant intends to pursue a provisional waiver of unlawful presence upon approval of the Form I-212.

A noncitizen may file a conditional Form I-212 application before departing the United States pursuant to the regulation at 8 C.F.R. § 212.2(j), in anticipation of applying for consular processing of an immigrant visa application abroad.[3] However, in this case the Applicant does not indicate that he intends to depart the United States. In the absence of an approved immigrant petition no purpose is served in adjudicating his application for permission to reapply for admission into the United States after deportation or removal.

The Director notes that it appears that the Applicant did not disclose his alias, initials T.F., when he applied for his second nonimmigrant visa under his legal name. The Applicant admits on appeal his failure to disclose his other identity when applying for a nonimmigrant visa. Had the U.S. Department of State been aware of the Applicant's use of an alias, additional details regarding his prior immigration violations would have been available. In failing to disclose his alias, the Applicant shut off a material line of inquiry concerning his eligibility for the visa. Therefore, the Applicant may also be inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact at the time of his application for a visa.[4] An application for permission to reapply for admission is denied, in the exercise of discretion, to a foreign national who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (Reg'l Comm'r 1964). The appeal of the denial of the Form I-212 will therefore be dismissed as a matter of discretion.

The Director concluded that the favorable factors in the Applicant's case did not outweigh the unfavorable factors. In her decision, the Director noted the Applicant's family ties in the United States, his spouse's medical problems, and his more than 20 years residence in the United States. In analyzing these factors, however, the Director noted that the record did not establish a close relationship between

[3] The approval of the Form I-212 under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if the Applicant does not depart.

[4] We note that if the Applicant departs the United States and applies for an immigrant visa, a U.S. Department of State consular officer will make a final determination of the Applicant's admissibility under section 212(a)(6)(C)(i) and any other applicable section of the Act at that time.

the Applicant and his U.S. citizen daughter, that the Applicant's spouse withdrew the immigrant petition she filed on his behalf, and that the medical records for the Applicant's spouse do not indicate that she relies on him for any level of care. In discussing the unfavorable factors, the Director noted the Applicant's derogatory immigration history, including his failure to comply with his Voluntary Departure Order, and the need for his apprehension by immigration officials on two separate occasions. She also noted that his application for a firearm ultimately lead immigration officers to his location more than a year after his failure to appear for voluntary departure. The Applicant asserts on appeal that the Director should not have considered his application for a firearm to be illegal, as he was unaware that he was not eligible to purchase an antique gun as a collector at the time he submitted the application, and the application was never approved because he did not present himself as a U.S. citizen or lawful permanent resident. He further asserts that he did not intentionally conceal his identity at the time of his second nonimmigrant visa application, but he mistakenly believed he would be unable to prove that both identities belonged to him.

As noted above, there is no approved or pending immigrant petition on the Applicant's behalf at this time and no purpose would be served in adjudicating the application for permission to reapply for admission. The record does not establish that the Applicant intends to apply for an immigrant visa and is seeking conditional permission to reapply for admission prior to departing the United States. Therefore, we need not weigh the favorable and unfavorable factors in the Applicant's case and we will dismiss the appeal.

ORDER: The appeal is dismissed.