U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17304720

Date: APR. 14, 2022

Appeal of Houston, Texas Field Office Decision

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

The Applicant seeks conditional 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 will be inadmissible upon departing from the United States for having been previously ordered removed.

The Director of the Houston, Texas Field Office denied the application. The Director concluded that the Applicant's favorable factors did not outweigh the adverse factors and denied the application as a matter of discretion.

The matter is now before us on appeal. On appeal, the Applicant asserts that the Director did not give sufficient weight to the favorable factors, and gave too much adverse weight to the Applicant's violations of immigration law.

We review the questions raised 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.

I. LAW

Section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), pertains to an "arriving alien" who has been ordered removed either under expedited removal[1] or at the end of removal proceedings[2] initiated upon arrival in the United States. Such an individual is inadmissible for five years after the date of removal; for 20 years in the case of a second or subsequent removal; or at any time if the individual has been convicted of an aggravated felony.

A 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.

[1] *See* section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1).
[2] *See* section 240 of the Act, 8 U.S.C. § 1229a.

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. *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).

II. ANALYSIS

The Applicant is currently in the United States and seeks conditional permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before she departs. She does not contest that she will be inadmissible under section 212(a)(9)(A)(i) of the Act upon departure for having been previously ordered removed. The only issue on appeal is whether the Applicant has demonstrated that approval of her Form I-212 is warranted as a matter of discretion.

The Applicant, a national and citizen of El Salvador, unlawfully crossed the U.S. border in June 2012, and was apprehended the next day. She was subject to an order of expedited removal within days of her arrival, but temporarily released under an order of supervision. The Applicant reported to Immigration and Customs Enforcement on several occasions in 2012 and 2013, under the terms of the order of supervision, but in late 2013 she failed to report for removal as required, and as a result the order of supervision was revoked. Upon departure from the United States, the Applicant will become inadmissible under section 212(a)(9)(A)(i) of the Act.

While under the order of removal, the Applicant married a U.S. citizen in 2018 and had a child with him the following year. The Applicant also has two daughters, born abroad in 2001 and 2007, from a previous marriage. Various individuals, some of them related to the Applicant's spouse, attested, in general terms, to the Applicant's moral character.

At the time of filing the application, the Applicant's spouse was working as a restaurant manager, but he had been offered a job in another industry that would entail 12-hour shifts that would limit his availability for child care. The Applicant and her spouse stated that the Applicant provides emotional support and performs important household activities including child care. Both indicated that the Applicant's spouse would suffer an "emotional breakdown" from worrying about the Applicant's safety if she were to return to El Salvador. The Applicant submits a travel advisory from the U.S. Department of State, urging U.S. citizens to "[r]econsider travel to El Salvador due to crime."

The Applicant contends: "There are no negative factors to outweigh" her good moral character, family ties, and the risks associated with returning to El Salvador. The Applicant has no criminal record, and asserts that she "has not attempted to infringe any other immigration laws." But the record shows that the Applicant has been employed for most of the time she has been in the United States; third-party letters in the record from 2019 indicate that the Applicant had been employed for at least six years.

For at least some of that time she worked at the same restaurant that employed her spouse, and a letter refers to a second, unidentified employer. The Applicant submits no evidence of employment authorization, and neither the Applicant nor her spouse mentioned this employment in their statements.

In the denial decision, the Director acknowledged "favorable recommendations attesting to [the Applicant's] good moral character," and determined that other favorable factors in this case relate to the Applicant's family, specifically her U.S. citizen spouse and children and the hardship that they would experience if the Applicant were unable to return to the United States.

Against the above favorable factors, the Director cited the Applicant's unlawful entry into the United States; her subsequent unlawful presence in the United States; her unauthorized employment; and her failure to report for removal or otherwise to depart the United States after being ordered removed.

The Applicant contends that the Director "finds a failure to comply with an order of removal to be an overwhelmingly negative factor," rising to the "level of moral turpitude," such that the application is effectively "futile" because "no amount of positive equities can balance out the applicant's failure to depart." The Director, however, did not state or imply that failure to depart is an insurmountable barrier to approval; the Director found only that the Applicant had not shown sufficient favorable factors in this particular case to outweigh the unfavorable factors and warrant an exercise of discretion in the Applicant's favor.

The Applicant also argues that the Director "fail[ed] to properly adjudicate the positive equities using *Matter of Tin* . . . or *Matter of Lee*." Specifically, the Applicant "has good moral character," "close family ties in the U.S.," and "the likelihood that lawful permanent residence will ensue" from the approved immigrant petition that the Applicant's spouse filed on her behalf.[3]

The Director acknowledged and cited both of the above-mentioned precedent decisions in the denial notice. The Director cited *Matter of Lee,* 17 I&N Dec. at 278 and *Matter of Tin,* 14 I&N Dec. at 374 to illustrate that an individual's lengthy presence and employment in the United States without legal authorization are adverse factors that weigh against approval of an application. The Director did not state that the Applicant's non-compliance with the removal order reflected poorly on her moral character. Nevertheless, the Director was not obliged to disregard this ongoing violation of immigration law. The cited precedent decisions took favorable notice that the applicants in those cases departed "voluntarily" when ordered to do so, stating that this action demonstrated a degree of respect for the law. Such compliance distinguishes the applicants in the cited cases from the Applicant in this proceeding.

Furthermore, the Director took the Applicant's family-related factors into consideration, but gave them less weight because the Applicant had no family ties in the United States until she married a U.S. citizen six years after she was ordered removed. Generally, favorable factors that came into existence after a removal order ("after-acquired equities") are given less weight in a discretionary determination. *See Garcia-Lopes v. INS*, 923 F.2d 72, 74 (7th Cir. 1991) (less weight is given to equities acquired

[3] The Applicant also contends that she meets the additional *Tin* factor of "the need for [the applicant's] services in the United States." *Id.* at 374. But the Applicant uses this term with regard to her family responsibilities. In the context of *Tin*, it is clear that "need for services" refers to employment, with family ties given separate consideration.

after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (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). This is an important consideration because the Applicant's family ties are arguably the primary factor upon which the application rests.

We have reviewed the entire record, and for the reasons explained below agree with the Director that the evidence is insufficient to show that a favorable exercise of discretion is warranted.

The most significant negative factors in the Applicant's case are her unlawful presence in the United States, unauthorized employment, and failure to comply with the removal order.

The positive factors include the Applicant's family ties in the United States, payment of taxes, apparent lack of criminal history, and difficult conditions in her native El Salvador. The Applicant also expresses remorse for her past violations of immigration law.

As an initial matter, there is no dispute that the Applicant's family in the United States will be negatively affected if she must remain abroad for the entire inadmissibility period. However as noted above, "after acquired equities" are given less weight in the discretionary analysis. Here, the Applicant did not marry her U.S. citizen spouse until after she was ordered removed. The Applicant and her spouse state that the spouse's work schedule would make child care difficult, but the Applicant does not address why her spouse cannot make other child care arrangements.. The Applicant has not shown that the claimed hardships to herself, her spouse, and her children outweigh the negative factors in her case, or that there are additional circumstances mitigating her immigration violations.

The other evidence, such as letters from third parties, a 2018 tax return showing that the Applicant reported her income, and country condition information for El Salvador, shows the existence of factors that would weigh in her favor, but is insufficient to overcome the adverse impact of the Applicant's unlawful entry, non-compliance with the removal order, unlawful presence in the United States since 2012, and unauthorized employment.

Consequently, we agree with the Director that the Applicant has not demonstrated that the favorable factors in her case considered individually and in the aggregate outweigh the unfavorable factors. 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.