U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13679867

Date: APR. 15, 2022

Appeal of New York City, New York Field Office Decision

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

The Applicant, who has an outstanding order of removal, 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. § l 182(a)(9)(A)(iii).

The Director of the New York City, New York Field Office denied the Form 1-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, as a matter of discretion, concluding that the favorable factors did not outweigh the unfavorable factors in the case.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

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 she is seeking conditional approval of her application under 8 C.F.R. § 212.2(j) before departing the United States to apply for an immigrant visa. Approval of her application under these circumstances would be conditioned upon the Applicant's departure from the United States and would have no effect if she fails to depart.

II. ANALYSIS

The Applicant was ordered removed in [redacted] 2006. On appeal, the Applicant contends that the Director erred by failing to appropriately consider documentation regarding her spouse's medical illness. She also re-submits a letter from a doctor treating the Applicant's spouse, a letter excusing the Applicant's spouse from work, and notes regarding two hospital visits made by the Applicant's spouse.

The record indicates that the Applicant entered the United States without inspection, authorization, or parole in September 2005. In [redacted] 2005, the Applicant was placed into removal proceedings before an Immigration Judge. In [redacted] 2005, the Applicant failed to appear for a hearing and was ordered removed *in absentia*.[1] *See* section 240(b)(5)(A) of the Act, 8 U.S.C. § 1229a(b)(5)(A) (stating that any individual who does not attend a required hearing "shall be ordered removed in absentia if [the Department of Homeland Security (DHS)] establishes by clear, unequivocal, and convincing evidence that . . . written notice was . . . provided and that the [individual] is removable"). The Applicant has not departed the United States.

In support of the instant Form I-212, the Applicant asserts that she is a religious and responsible member of the community who has continuously filed tax returns. The Applicant further asserts that, if separated from him, her U.S. citizen spouse[2] would experience medical and financial hardship. She explained that her spouse underwent cataract surgery and now requires eye drops four times a day, which she reminds him to take. She also said he has diabetes and hypertension, that she assists him with his required diet and his medication, and that she helps him with his frequent doctor visits. She further explains the financial hardship her husband will experience without her given his plans to retire soon, due to his physically demanding job, and the Applicant will be the family's sole provider. She contends that if she returns to Honduras she will not be able to earn the same amount of money as in the United States, does not have savings or property that could substitute as income, and does not have family in the United States that will send remittances. She also claims that if her spouse relocates to Honduras with her, he will not have access to adequate medical care. In addition, the Applicant states that she is concerned for the safety of her and her spouse if they relocate to Honduras given the high crime rate in that country.

In denying the application, the Director acknowledged the Applicant's evidence such as her statement, letters of support from friends, copies of utility bills, a copy of her federal income taxes for 2017, and evidence of country conditions. The Director determined that these positive factors were insufficient to overcome the negative impact of the Applicant's entry into the United States without inspection, non-compliance with the removal order, and unlawful residence in the United States. The denial also indicated that the record did not contain documentary evidence to support the claim of medical hardship to her spouse. Specifically, the Director noted that a letter from a medical professional indicating any medical conditions suffered by the Applicant's spouse was not submitted as evidence.

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[1] Section 212(a)(6)(B) of the Act provides that any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the noncitizen's inadmissibility or deportability, and who seeks admission to the United States within five years of the noncitizen's subsequent departure or removal, is inadmissible. Section 212(a)(6)(B) of the Act is a separate ground of inadmissibility, applicable upon subsequent departure from the United States, that imposes a penalty specifically for failing to attend a removal hearing.

[2] The record establishes that her spouse is a U.S. citizen.

On appeal, the Applicant contends that she did in fact submit documentation of her spouse's medical conditions and resubmitted evidence that includes a letter from a doctor treating her spouse, an excused absence from work for the Applicant, and summaries of two of her spouse's medical visits.

In the present case, we find that there is insufficient evidence to demonstrate that a favorable exercise of discretion is warranted. With respect to the Applicant's claim regarding her spouse's health, the Applicant submits documentation previously submitted. On appeal, the Applicant states that her spouse was recently hospitalized for three days due to prostate pain and bleeding and was excused from work for 18 days. Regarding the claimed medical hardship to the Applicant's spouse, the doctor's letter and medical visit summaries do not sufficiently show that he has any conditions that require specialized treatment or that he would be unable to receive adequate health care if the Applicant must remain abroad until her inadmissibility period expires.

Given the lack of supporting evidence on the record, we find, even when viewing the totality of the circumstances, that the Applicant has not established that the favorable factors in his application outweigh the unfavorable ones. Therefore, a favorable exercise of discretion is not warranted, and the application will remain denied as a matter of discretion.

ORDER: The appeal is dismissed.