U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19366654

Date: APR. 28, 2022

Appeal of New York, New York Field Office Decision

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

The Applicant has filed a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal. *See* Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii). *See also* Section 212(a)(9)(A)(ii) of the Act. The Director of the New York, New York Field Office denied the application, concluding that the "negative factors outweigh the favorable factors [the Applicant] acquired after the [deportation] order was entered against [her]" in 1996.

The Applicant bears the burden of proof in these proceedings to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for additional review and the entry of a new decision.

I. LAW

A noncitizen may file a Form I-212 application if he or she is inadmissible under Section 212(a)(9)(A) of the Act. A noncitizen is inadmissible under Section 212(a)(9)(A) of the Act if he or she was removed from the United States or departed the United States on his or her own after being ordered deported or removed, and subsequently seeks admission to the United States or seeks adjustment of status to that of a lawful permanent resident. Under the regulation at 8 C.F.R. § 212.2(j), a noncitizen whose departure will execute an order of removal may, prior to leaving the United States, seek conditional approval of a Form I-212 application for permission to reapply for admission. The approval of the application under these circumstances is conditioned upon the noncitizen's departure from the United States and would have no effect if he or she fails to depart.

Approval of a Form I-212 application 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, 373-74 (Reg'l Comm'r 1973); *see also Matter of Lee*, 17 I&N Dec. 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").

Generally, favorable factors that came into existence after a noncitizen has been ordered removed from the United States 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 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).

II. ANALYSIS

The record indicates that the Applicant, a native and citizen of Ecuador, entered the United States at the United States-Mexico border in or around 1995 without being inspected or admitted. According to a [redacted] 1996 Record of Sworn Statement in Affidavit Form of the former Immigration and Naturalization Service (INS), the Applicant informed an INS officer that her name was [redacted]. She claimed that she entered the United States in December 1995 and that shortly after began working at a factory without authorization. In [redacted] 1996, INS issued an Order to Show Cause (OSC) and Notice of Hearing to the Applicant, informing her that she was deportable from the United States because she entered the country without inspection, and ordering her to appear for a hearing before an immigration judge in New York, New York, on [redacted] 1996, at 9:00 am.[1] The Applicant did not attend the hearing on [redacted] 1996. As a result, an immigration judge ordered her deported *in absentia* to Ecuador. If the Applicant departs the United States, she would be inadmissible under Section 212(a)(9)(A)(ii) of the Act. She therefore has filed a Form I-212 application seeking conditional approval for permission to reapply for admission. *See* 8 C.F.R. § 212.2(j).

In addition to the above noted negative factors, there appears to be other negative factors in this case. For example, it appears that the Applicant was found guilty of "Fail to Have Vehicle Inspection" in 2012, and she was charged and fined for "Infraction" in 2015. Also, in 1992, the Applicant appears to have used another individual's passport to attempt to enter the United States through the Miami International Airport. When she was confronted by an INS officer, she informed the officer that her name was [redacted]' and admitted to buying the passport for $6,000.

In the decision denying the Form I-212 application, the Director stated that the Applicant presented evidence of two favorable factors: "[Her] medical conditions," and "maintenance of family unity." It appears, however, that the Director did not consider all favorable factors in this case. In support of her Form I-212 application, the Applicant submitted a marriage certificate, showing that before being issued a deportation order in [redacted] 1996, she married her spouse, who is a United States citizen, in

[1] The "Certificate of Translation and Oral Notice" section of the OSC indicates that the document was read to the Applicant in Spanish. The "Manner of Service" section of the OSC indicates that the document was given to the Applicant through personal service.

[redacted] 1996 in Virginia.[2] According to an undated letter from the Applicant's spouse, who works in construction, "[s]he is [his] right hand" and that she "was the only person who could make [him] feel happy and better" when he "suffered from severe depression due to the lack of a job, among other things." According to an August 2020 report from a clinical psychologist, the Applicant's spouse reported that he "relied on [the Applicant] for emotional support," that he experienced "major depression and panic" episodes, and "was diagnosed (in the hospital) with anxiety and given a prescription for Zoloft." The August 2020 report indicates that "in recent months [the Applicant's spouse] has experienced a recurrence of many of his symptoms of anxiety and depression," has "difficulty sleeping, low mood, constant worry . . . , reduced appetite" as well as "some physical symptoms of anxiety." In an August 2020 letter, the Applicant's spouse stated that the Applicant's "absence in [his] life and in the lives of [their] children would impact everything negatively" and that they "cannot live with such trauma." The favorable considerations associated with the Applicant's spouse are not after-acquired equities, as the Applicant married her spouse before being ordered deported.

In addition, the Applicant has submitted documents showing that she and her spouse has three United States citizen children born in 1998, 2002, and 2004, respectively. On appeal, the Applicant offers a document entitled "My Family in the United States," claiming that her mother, four sisters, two brothers, and two brothers-in-law also live in the United States. Many of these individuals have offered letters in support of the Applicant's Form I-212 application. The record includes other documents, some of which the Applicant offers on appeal, alleging that in 2014, she was diagnosed with "subarachnoid hemorrhage secondary to ruptured aneurysm" that led to her having brain surgery and a multi-week hospital stay; she suffers from additional medical issues including high blood pressure; all three of her children have experienced anxiety and panic attacks; and that her oldest child, who is approximately 24 years old, was diagnosed with "significant depression and anxiety" and received treatment from [redacted] Center for Psychological Services between 2015 and 2017. The Applicant's children have offered letters indicating that they rely on the Applicant for both emotional and financial support.

The evidence also indicates that the Applicant has operated a cleaning service business since 2017, and that her business earnings help support her family. The record includes letters from multiple of her clients, including those who have relied on her services of years, discussing her trustworthiness and other aspects of good moral character. On appeal, the Applicant presents evidence showing that she and her spouse filed taxes between 2015 and 2019, reporting her spouse's construction business income as well as her cleaning service business income.

While in the decision denying the Form I-212 application the Director identified two favorable factors – "[the Applicant's] medical conditions," and "maintenance of family unity" – there appears to be additional favorable factors in this case that the Director did not consider. They include the Applicant's length of residence in the United States, her moral character, her family responsibilities, hardship involved to the Applicant, her spouse and their children; and the need for the Applicant's services in the United States. *See Matter of Tin*, 14 I&N Dec. at 373-74; *see also Matter of Lee*, 17 I&N Dec. at 278. As the Director's decision does not reflect a proper analysis of the favorable and

[2] The record shows that in 2017, the Applicant's spouse filed a Form I-130, Petition for Alien Relative, on behalf of the Applicant, which the U.S. Citizenship and Immigration Services approved in 2018.

unfavorable factors in the Applicant's case, as required, we will remand the matter for entry of a new decision regarding the Applicant's eligibility for her Form I-212 application.

III. CONCLUSION

In light of the deficiencies noted above and given the lack of sufficient analysis in the Director's decision, we are remanding the matter for the Director to review the entire record, including documentation the Applicant presents on appeal, and determine whether she merits a conditional approval of her Form I-212 application in the exercise of discretion. On remand, the Director shall review and weigh all positive and negative factors with consideration to all evidence presented.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.