U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19409238

Date: APR. 28, 2022

Appeal of Charlotte, North Carolina 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 he will be inadmissible upon departing from the United States for having been previously ordered removed.

The Director of the Charlotte, North Carolina Field Office denied the application. The Director concluded that the Applicant had not shown that a favorable exercise of discretion is warranted.

The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and states that the Director did not give sufficient weight to favorable discretionary factors.

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)(ii) of the Act provides, in part, that a noncitizen who has been ordered removed, or who departed the United States while an order of removal was outstanding, is inadmissible for 10 years after the date of departure or removal.

A noncitizen 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 re-embarkation 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.

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 a citizen and national of Mexico who entered the United States without admission in May 2005, when he was 17 years old. The Applicant was arrested for a traffic violation in [redacted] 2017. The Applicant was ordered removed in [redacted] 2018; his appeal from the removal order was dismissed in July 2020.

In [redacted] 2017, the Applicant married his U.S. citizen spouse, who has two children, born in 2003 and 2005, from a previous marriage. His spouse filed an immigrant relative petition on his behalf in January 2018. The Applicant states that his immigration proceedings have made his spouse "depressed, anxious and angry"; he submits an evaluation from a clinical mental health counselor, who states "it is likely that [the Applicant's spouse's] anxiety symptoms would worsen" in the Applicant's absence.

The Applicant adds that his spouse has never lived in Mexico, and his stepchildren are not fluent in Spanish, and therefore they would face additional difficulty if they were to relocate to Mexico with the Applicant.

The Applicant states that, if he cannot remain in the United States, his family would suffer hardship whether they remain in the United States or relocate with him. The Applicant states that, if his spouse were to remain in the United States, she would need to work a second job to cover family expenses, whereas if the family were to move with him, what he describes as Mexico's poorer economy, health care, and educational systems would make life difficult. The Applicant also states that Mexico would be dangerous for him and for any family members who were to accompany him there.

The Applicant submits affidavits, signed by various friends, attesting in general terms to the Applicant's helpfulness and his moral character. We note that several of these statements are identically worded, or nearly so. The identical language in the submitted affidavits undermines their probative value.[1]

The Director acknowledged various factors in the Applicant's favor, such as his family ties and his family's emotional and financial dependence on him; affidavits attesting to the Applicant's character; and the Applicant's assertions about economic and social conditions in Mexico. But the Director also gave significant weight to the Applicant's "lack of respect for law and order," as shown by his years of unlawful presence and unauthorized employment in the United States; his failure to depart after

[1] Identical language in letters "suggests that the letters were all prepared by the same person and calls into question the persuasive value of the letters' content." *Hamal v. U.S. Dep't of Homeland Security*, No. 19-2534, slip op. at 8, n.3 (D.D.C. June 8, 2021).

being ordered removed; and "multiple traffic violations" since 2010, including a 2018 conviction for driving while impaired.

The Director acknowledged the Petitioner's assertions about country conditions in Mexico, but concluded that the Applicant had not submitted corroborating evidence.[2] The Director also acknowledged the Applicant's submission of a mental health evaluation for the Applicant's spouse, but concluded: "There is not any evidence in the record that [the Applicant's] spouse is continuing to receive medical care for her anxiety."

On appeal, the Applicant states that he "has made every effort to rehabilitate" following his 2018 prosecution, and has been donating to charity. The Applicant submits copies of receipts for charitable donations and shows that he has performed services for his church. We acknowledge this service, but note that the Applicant worked for the church to fulfill the community service requirement of a criminal sentence. The receipts for the charitable donations post-date submission of the initial application and are dated July 1, 2021, after the Director denied the Form I-212 application. The Applicant has also expressed remorse for his immigration and criminal violations, but significant negative weight attaches to the length of his unlawful presence, the seriousness of driving while impaired or intoxicated, and the recent occurrence of that offense.

The Applicant states that his spouse "has not been able to continue attending her therapy sessions because they have a lot of financial responsibilities and cannot afford to take time off work to attend." He also states that she is taking medication for a thyroid condition. In their statements with the initial filing, both the Applicant and his spouse indicated that they were in good health. On appeal, the Applicant does not submit evidence regarding his spouse's thyroid condition.. The appeal also does not include evidence that the Applicant's spouse was in therapy or sought mental health assistance beyond the evaluation documented in the initial submission. The Applicant asserts that the evaluation "confirmed that [the Applicant's spouse] was showing [several] symptoms," but the evaluation states only that she self-reported those symptoms. The same evaluation indicated that the Applicant's spouse "stated that she also has hypothyroidism," but the record does not contain any evidence about the severity of the condition or its impact on her ability to function or care for her family.

While denial of the application would result in some hardship to the Applicant and to his family, the Applicant has not established that the factors in his favor are sufficient to outweigh the substantial adverse factors stemming from his violations of both immigration and criminal law.

ORDER: The appeal is dismissed.

[2] An exhibit list submitted with the application identifies "Articles Related to Current Country Conditions in Mexico," but these documents are not in the record before us.