U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21383562

Date: AUG. 11, 2022

Appeal of Oakland Park, Florida 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. § 1182(a)(9)(A)(iii). The Director of the Oakland Park, Florida 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.

On appeal, the Applicant submits additional evidence and asserts that she has provided substantial and significant equities such that she warrants a favorable exercise of discretion.

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 remand the matter to the Director for the entry of a new decision.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a foreign national who has been ordered removed under section 240 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. 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. *Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973).

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.[1] She does not contest that she will become inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure for having been previously ordered removed.[2] 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.

In denying the Form I-212, the Director acknowledged numerous favorable factors in the case, including, but not limited to: the Applicant's residence of long duration in the United States; her marriage to a U.S. citizen; her assistance in the care of her mother-in-law who has several medical issues; her steady employment in the United States; and the lack of any criminal history. However, the Director found that the Applicant's family ties were created after she had been ordered removed, that any weight given to her length of residence in the United States is diminished given that she remained unlawfully in the United States after having a final order of removal entered against her, and that she was employed without authorization. The Director noted that the Applicant's spouse did not describe the hardship he would suffer upon the Applicant's departure from the United States. The Director concluded that the favorable factors did not outweigh the negative factors and denied the application accordingly.

The Applicant now submits new evidence, including documentation that while her case was pending, her spouse suffered a stroke in February of 2020. The Applicant submits copies of her spouse's medical records as well as a sworn statement from her spouse attesting that his stroke paralyzed his right side, rendered him unable to speak clearly, and significantly affected his vision. He describes how the Applicant cared for him immediately after his stroke and explains that although he is recovering, the stroke has significantly affected his mental health as he wonders whether he will ever be able to have a normal life again. He explains, among other things, that the couple has been together for almost two decades, that the Applicant is the love of his life, and that he needs her by his side in order to be emotionally and physically stable. In addition, he states that he needs the Applicant to continue helping to care for his mother and contends that he will be torn apart emotionally as well as financially without the Applicant. A psychological report submitted on appeal discusses, among other things, the Applicant's spouse's stroke and its effects, and diagnoses him with posttraumatic stress disorder, major depressive disorder, and generalized anxiety disorder with panic attack.

[1] 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.

[2] The record reflects that the Applicant entered the United States without inspection in 1995. In 2000, an Immigration Judge granted the Applicant voluntary departure until [redacted], 2000, with an alternate order of removal to Colombia if she failed to depart by that date, a decision subsequently upheld by the Board of Immigration Appeals. The Applicant did not depart and continues to reside in the United States.

Considering the Applicant's new claims and evidence submitted on appeal relating to her favorable discretionary factors, we find it appropriate to remand the matter for the Director to determine in the first instance if the Applicant merits a favorable exercise of discretion.

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