U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16005446

Date: AUG. 12, 2022

Appeal of Los Angeles County Field Office Decision

Form I212, Application for Permission to Reapply for Admission

The Applicant 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), because she will be inadmissible upon departing from the United States for having been previously ordered removed.

The Director of the Los Angeles County Field Office denied the application, concluding that the record did not establish that the Applicant met the statutory requirements for the requested benefit, and that the favorable factors in her case did not outweigh the negative factors such that a favorable exercise of discretion was warranted.

The matter is now before us on appeal. In the appeal, the Applicant states that the Director erred by not recognizing that her application was filed for conditional approval pursuant to 8 C.F.R. § 212.2(j), misstating the dates of her removal order and grant of voluntary departure, and misidentifying the sections of the statute under which she is inadmissible. In addition, she states that contrary to the Director's decision, she is not statutorily ineligible for permission to reapply for admission, and that the Director failed to consider and analyze positive factors, such as family unification, which outweigh the negative factors in her 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 withdraw the Director's decision and remand this matter for the entry of a decision consistent with the following analysis.

I. LAW

The Applicant is seeking permission to reapply for admission to the United States and has been found inadmissible for having been previously ordered removed.

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any alien, other than an arriving alien described in section 212(a)(9)(A)(i), who "has been ordered removed . . . or 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 (or within 20 years of such date in the case of a second or

subsequent removal or at any time in the case of an alien convicted of an aggravated felony) 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) 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. *See 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, 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").

II. ANALYSIS

The Applicant has been found inadmissible under section 212(A)(9)(a) of the Act for having been previously ordered removed. Specifically, the record shows that she entered the United States without inspection on or about February 1, 1988. On [redacted] 2008, she was served with a Form I-862 Notice to Appear which charged her with inadmissibility under section 212(a)(6)(A)(i) of the Act as a noncitizen present in the United States without being admitted or paroled and placed into proceedings.[1] On [redacted] 2011, the Applicant's applications for asylum and withholding of removal were withdrawn, and the immigration judge denied her application for cancellation of removal and granted voluntary departure until June 1, 2011. She appealed the judge's decision to the Board of Immigration Appeals (the Board), who dismissed the appeal on January 18, 2013 and a subsequent motion to reopen on May 1, 2013. The record indicates that the Applicant has remained in the United States since entering in 1988. An immigrant petition filed by her current husband was approved on May 10, 2013.

In his decision, the Director stated that the Applicant did not meet "the statutory threshold requirements for permission to reapply for admission in to the United States," but did not specify which statutory requirements the Applicant failed to meet.[2] As noted above, section 212(a)(9)(A)(iii) of the Act provides that noncitizens found inadmissible under 212(a)(9)(A) may seek permission to

[1] As noted by the Applicant, the Director's statement that she was ordered removed on [redacted] 2008 is incorrect.
[2] The Director also stated that Section 212(a)(9)(A)(iii) of the Act "does not provide relief from deportation, which is what you are requesting." As Form I-212 is not an application for relief from removal, but for permission to reapply for admission to the United States, the basis for the Director's statement is unclear. On remand, the Director should focus on weighing the unfavorable factors in the Applicant's case against the favorable ones, to determine if a favorable exercise of discretion is warranted regarding the benefit requested.

reapply for admission, and that approval of such an application is discretionary and based upon a weighing of unfavorable versus favorable factors. Also, 8 C.F.R. § 212.2(j) provides for advance or conditional approval of permission to reapply for admission for noncitizens whose departure will execute an order of deportation, and the instructions to Form I-212 specifically state that noncitizens who were ordered removed due to inadmissibility under section 212(a)(9)(A) of the Act but remained in the United States and will seek an immigrant visa abroad are eligible for conditional approval as a matter of discretion. Therefore, as the Applicant has an approved immigrant visa petition and has made clear her intent to seek an immigrant visa abroad, she may apply for conditional permission to reapply for admission, and to the extent that the Director's decision indicates that she is statutorily ineligible to do so, the decision is withdrawn.

As stated above, when considering whether a request for permission to reapply merits a favorable exercise of discretion, positive factors may include hardship to the applicant and other U.S. citizen or lawful permanent resident relatives, the applicant's respect for law and order, the recency of deportation, the applicant's moral character, and family responsibilities. Here, the Director listed the evidence submitted by the Applicant and provided commentary related to some of the material. Regarding statements from the Applicant's friends and family members, the Director noted that they were not supported by "corroborative evidence of extreme hardship." However, the requirement of establishing extreme hardship to a qualifying relative (or qualifying relatives) does not apply to noncitizens who seek permission to reapply for admission to the United States after deportation or removal. Rather, *any* hardship to the Applicant or her family members is a factor to be considered in the discretionary analysis.

In addition, the Director did not fully address the evidence of significant favorable factors in the record, including the length of the Applicant's residence in the United States, hardship to the Applicant and her three adult U.S. citizen children, and family responsibilities. For example, the Applicant has lived in the United States for more than 30 years and has three U.S. citizen children, and has been married to her current U.S. citizen husband for more than 10 years. While the Director noted that the Applicant was arrested on two occasions, he did not appear to consider the ultimate disposition of those charges and the fact that her last arrest occurred more than 20 years ago.[3] Further, while the Director concluded that the favorable factors in this case do not outweigh the negative factors, he did not provide an analysis of how the negative factors outweigh the favorable factors discussed above.

In light of the deficiencies noted above, we will remand this matter to the Director to reevaluate the submitted evidence applying the appropriate standard and determine whether the Applicant warrants 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.

[3] The record indicates that the Applicant was convicted for battery under California Penal Code section 242 relating to a crime occurring on or about [redacted], 2000, and was given a suspended sentence, summary probation for 36 months, attorney's fees of $188, and counseling for 30 days in lieu of 45 days in county jail. The Applicant was also charged with hit and run with property damage on [redacted], 2001, but those charges were resolved through compromise and restitution to the victim.