U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23311528

Date: DEC. 12, 2022

Motion on Administrative Appeals Office Decision

Form I-212, 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. Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion.

The Director of the Los Angeles County Field Office denied the application, concluding the Applicant did not establish that a favorable exercise of discretion was warranted in her case. We agreed and dismissed her subsequent appeal and motion to reopen. The matter is now before us on a motion to reconsider.

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 review, we will dismiss the motion.

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

This is our third review of the Applicant's application for permission to reapply for admission and we incorporate our prior decisions by reference.[1] We further note that the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(l)(i). Thus, the issue before us is whether the Applicant has established that our decision to dismiss the prior motion to reopen was based on an incorrect application of law or USCIS policy. The motion does not entitle the Applicant to a reconsideration of the denial of the application, and she cannot use the present filing to make new allegations of error at prior stages of the proceeding.

[1] As the Applicant does not take issue with our prior treatment of Armenian country conditions, we incorporate the same analysis here.

As we explained in our prior decision, while we are sympathetic to the hardships of the Applicant and her family, the new evidence submitted on motion did not add sufficient weight to the favorable factors to overcome the unfavorable factors.[2]

The Applicant asserts that the agency's decisions gave too much weight to her two negative factors. First, the Applicant argues that we failed to consider that her use of travel documents that did not belong to her to enter the United States is consistent with her flight from persecution and asylum claim. She submits that untrue statements made to border officials as a consequence of flight from persecution should not be treated as a negative factor according to *Turcios v. INS*, 821 F.2d 1396 (9th Cir.1987). While we may agree with this general proposition, as we explained in our dismissal of the appeal, the Applicant has not established that she:

> made misrepresentations or presented fraudulent identity documents solely as a consequence of flight from persecution per *Turcios* []. The Applicant has been found ineligible for asylum, in part based on credibility concerns, which calls into question whether the reason for the Applicant's misrepresentations was in fact to flee persecution or in order to evade U.S. immigration laws.[3]

We would add that, in *Turcios*, not only did the Court disagree with the Immigration Judge's determination that his testimony was evasive, but it determined that his testimony was credible, and established a clear probability of persecution. Here, the Board of Immigration Appeals (the Board) agreed with the Immigration Judge that the Applicant's testimony had inconsistencies that rendered her ineligible for asylum, withholding of removal, and relief under the Convention Against Torture. Unlike Mr. Turcios, who lied about his country of citizenship to avoid removal to his home country, the Applicant testified that she used multiple false documents to enter the United States and her testimony regarding her date, place, and manner of entry was found not to be consistent or credible. Notably, the Applicant has yet to establish the true facts of her entry to the United States. Therefore, the concerns expressed by the Immigration Judge, and the Board, remain valid and unresolved. The holding in *Turcios* is distinguishable, and the Applicant's lack of credible testimony during her asylum proceedings remains a significant negative factor in our discretionary analysis. *See Matter of Tijam*, 22 I&N Dec. 408, 414 (BIA 1998) (observing that "false testimony under oath ... is ... considered an extremely serious adverse factor," even when that fraud is the basis for the waiver sought).

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[2] 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).

[3] The Director observed that the Applicant was found to have presented a false passport while attempting to board a flight to the United States in 2001 and that in her asylum testimony in 2003 she stated that she used a false passport, false I-551, and "green card". However, the Applicant was inconsistent in her asylum testimony about whether she presented these documents to enter the United States. The appeal brief authored by counsel affirm[ed] that the Applicant made misrepresentations in conjunction with her entry to the United States.

Second, regarding the inconsistency between the claimed 2004 date of marriage and her actual marriage in [redacted] 2009, the Applicant asserts that this does not demonstrate a lack of respect for U.S. law, but was a simple miscommunication. Her explanation is that she meant she had been living as husband and wife since 2004. On [redacted] 2009, the Applicant's appeal of the Immigration Judge's [redacted] 2006 removal order and denial of all removal relief was dismissed by the Board of Immigration Appeals. On that date her removal order became final. *See* 8 C.F.R. § 1241.1(a). As explained in our prior decisions, equities which come into being after a removal order can be given less weight in a discretionary analysis because an individual who gets married or has children while subject to a final order of removal from the United States, does so with an understanding that they are not permitted to remain. We acknowledge that in those cases, a spouse or children may suffer hardship if the individual is removed, but because the parties are on notice that the individual is here contrary to the law, and may be removed, the hardships carry diminished weight in our discretionary analyses. *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 need not be accorded great weight by the director in a discretionary determination). Therefore, the true date of her marriage is material, and without more, we cannot conclude that the Director erred in taking the Applicant's incorrect statement at face value and determining it to be consistent with her lack of credible testimony in her asylum proceedings.[4]

The Applicant also asserts that we disregarded evidence of her spouse's stress-related stomach issues because we only referenced his psychological evaluation. However, in our dismissal of the appeal, we specifically acknowledged "the submission of multiple medical documents regarding the Applicant's spouse's conditions," but concluded that "absent an explanation in plain language from a treating physician of the exact nature and severity of the spouse's condition and a description of any treatment or family assistance needed, we" could not "reach conclusions concerning the severity of a medical condition and how it would create hardship for the Applicant or spouse." In our most recent decision, we carefully evaluated the therapist's letter attributing the spouse's stomach problems to the Applicant's denial of "U.S. citizenship in 2004." The record also contains a statement from the Applicant's spouse explaining that he is sick from stress-related ailments and that he follows a special diet, which requires his wife to prepare food for him. However, we do not find the totality of this evidence persuasive because it lacks pertinent details. For example, no evidence was submitted to establish if his special diet requires foods that would be unavailable to him in Armenia, or if he would be unable to obtain treatment for his stomach issues there. The record is insufficient to establish the seriousness of his condition, and it is not apparent that his condition is significantly serious to overcome the aforementioned negative factors in the exercise of our discretion.

The Applicant has not established that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. §103.5(a)(3).

ORDER: The motion to reconsider is dismissed.

[4] While we have considered all the Applicant's family responsibilities in the United States, her family ties, responsibilities, and hardships that arose after [redacted] 2009, have been given diminished weight in our discretionary analysis. These after-acquired equities include her marriage and two of her three children (and any hardships arising from those relationships). The only pre-existing family equity she presents is her oldest child, who is currently 16 years old.