U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16998270

Date: JUN. 6, 2022

Appeal of Newark, New Jersey 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 he is inadmissible for having been previously ordered removed.

The Director of the Newark Field Office denied the Form I-212 concluding that the Applicant, who is currently abroad, had not shown that a favorable exercise of discretion is warranted. On appeal, the Applicant asserts that the Director erred and did not account for several positive factors.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal because the Applicant has not met this burden.

I. LAW

Any foreign national who has been ordered removed as an "arriving alien" either through an expedited removal or at the end of removal proceedings initiated upon arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years 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. Section 212(a)(9)(A)(i) of the Act.

Foreign nationals who are 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. 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, 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, a citizen and native of Israel, requested an immigrant visa abroad and was found by the U.S. Department of State (DOS) inadmissible under section 212(a)(9)(A)(i) of the Act because of a prior removal from the United States. The Applicant does not contest this inadmissibility. The only issue on appeal is whether he merits a grant of permission to reapply for admission.

The record reflects that the Applicant visited the United States several times as a nonimmigrant. In [redacted] 2019, the Applicant sought admission to the United States as a nonimmigrant and initially told government officials that he was traveling with his cousin. He was sent to secondary inspection and had his baggage inspected. The baggage inspection revealed the Applicant had business cards and credit cards issued under another name. The Applicant was interviewed by government officials and admitted in a sworn statement that he 1) was actually traveling with his spouse and not his cousin; 2) opened a real estate business in the United States; and 3) had engaged in unauthorized employment since 2015. Because he had engaged in unauthorized employment during his previous periods of admission, he was determined to be inadmissible to the United States under section 212(a)(7)(A)(i)(I) of the Act as an intending immigrant without a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document, the Applicant's nonimmigrant visa was cancelled, and he was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1361.

The Applicant's spouse filed a Form I-130, Petition for Alien Relative (relative petition), on his behalf, which was approved in Feb 2020, and he then submitted this instant application. In support of this application, the Applicant included, but not limited to his affidavit, his spouse's affidavit, letters from the spouse's doctors, the spouse's medical history, banking statements, travel itineraries, job offer letters, and support letters for the Applicant. Although the Director acknowledged that there were favorable considerations in the Applicant's case, including no criminal record, an approved relative petition, and medical hardships to U.S. citizen, the Director ultimately determined that the positive factors were insufficient to overcome the violation of his nonimmigrant visa and the totality of the circumstances and actions during his attempted entry in [redacted] 2019.

On appeal, the Applicant argues that the Director did not consider all the favorable factors including his spouse's health condition, the unavailability of medical care for the spouse's condition in Israel, the spouse's academic opportunities, their financial hardships, their hardship in starting a family, and the Applicant's moral character.[1] With his appeal, the Applicant submits additional evidence including the spouse's medical insurance terms.

[1] The Applicant's U.S. citizen spouse is living with the Applicant overseas in Israel.

We have reviewed the entire record, and for the reasons explained below, agree with the Director that the evidence is insufficient to show that a favorable exercise of discretion is warranted. The most significant negative factors in the Applicant's case are the basis for his prior deportation and the violation of his nonimmigrant visa from his unauthorized employment.

The Applicant on appeal contests that he engaged in any unlawful employment and violated the terms of his nonimmigrant visa and asserts that he only admitted to owning a real estate company in the United States while not working and/or receiving any salary. However, the Applicant's sworn statement indicates that he performed a real estate job while in the United States and earned $5,000 for selling an apartment. Moreover, when asked when the unauthorized employment in the United States started and how much he made, the Applicant stated he started in 2015 and made about $35,000 to $36,000. Thus, the Applicant's testimony supports the finding of this significant negative factor.

The positive factors include the Applicant's family ties to the United States from his U.S. citizen spouse, an approved relative petition, and his spouse's medical hardship. We also acknowledge the letters of support written on the Applicant's behalf, the Applicant's emotional and physical support to his spouse, and that the Applicant appears to have no criminal record. While the Applicant's spouse asserts that she cannot receive suitable medical care, the Applicant has not provided any definitive supporting evidence that she would not be able receive comparable medical care in Israel. The medical insurance document on appeal only states that they will not cover any treatments related to multiple sclerosis, but does not state that treatment for her multiple sclerosis and migraines are unavailable. We acknowledge that her multiple sclerosis treatments may not be covered by insurance in Israel, but nothing bars the Applicant's spouse from returning to the United States and/or living in the United States to seek her medical services.

Regarding their financial hardship, although both the Applicant and his spouse were unemployed at the time of the application, the Applicant has not provided evidence that he would be unable to find a job in Israel, where he is a citizen and can speak the language. The Applicant has also acknowledged that his family still lives in Israel, but the Applicant has not indicated whether his family has or will be able provide him financial support.

We recognize that there are several favorable factors in the Applicant's case, including his U.S. citizen spouse, the support he provides his spouse, his spouse's medical hardship, and the approved relative petition filed on his behalf. However, this evidence is insufficient to overcome the adverse impact of the Applicant's actions at his prior deportation and the violation of his nonimmigrant visa from his unauthorized employment.

Consequently, we agree with the Director that the positive factors considered individually and in the aggregate do not outweigh the negative factors. A favorable exercise of discretion is therefore not warranted, and the Applicant's request for permission to reapply for admission to the United States remains denied.

ORDER: The appeal is dismissed.