U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19825894

Date: JUNE 15, 2022

Appeal of Houston, Texas Field Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant will be inadmissible upon his departure from the United States for having been previously ordered removed and 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 Houston, Texas Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), as a matter of discretion, concluding that favorable factors did not outweigh the unfavorable factors in the case. The Applicant filed an appeal of the decision with this office. On appeal, the Applicant submits new evidence and contends that he has established eligibility for the benefit sought. 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 remand the matter to the Director for further proceedings.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides that any noncitizen, 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 a noncitizen 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 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, 373-74 (Reg'l Comm'r 1973). The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The record reflects that the Applicant entered the United States without inspection in 1997 when he was 15 years old. In 2004, he was ordered removed but did not depart. The Applicant is currently in the United States and seeks permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before departing to apply for an immigrant visa abroad.[1] Because he has an outstanding order of removal, he will be inadmissible under section 212(a)(9)(A)(ii) of the Act once he departs.

In the discretionary analysis, the Director noted the Applicant's [redacted] 2001 conviction for driving under the influence of alcohol, [redacted] 2001 conviction for petty theft, and his lengthy period of unlawful residence. The Director also acknowledged the Applicant's family ties, namely his U.S. citizen mother, lawful permanent resident father (LPR), three U.S. citizen siblings, and LPR brother. The Director further acknowledged that the Applicant's mother has a medical condition which could become more complicated as she ages and the Applicant's claim that his parents would experience hardship upon separation from him because he is the head of the household, and they rely upon him for support. However, the Director determined that the Applicant did not provide any evidence, such as financial records or employment and tax documentation, demonstrating the type of support he provides to his parents. The Director also noted that while the Applicant claimed to be the head of the household, the record indicates that that he and his parents reside with his brother, at a home owned by his brother. In addition, the Director noted the seven letters of support submitted from the Applicant's relatives contained verbatim accounts and do not give any specific information regarding the Applicant's claimed role as head of the household. Considering the foregoing, the Director denied the Form I-212 as a matter of discretion, concluding that favorable factors did not outweigh the unfavorable factors in the Applicant's case.

On appeal, the Applicant contends that the Director erred by failing to appropriately consider and weigh the submitted evidence, including the fact that he was a minor at the time of his entry without inspection, and the lack of a criminal record for more than 20 years. He also submits additional evidence of his employment and updated letters of support. In addition, he asserts that his father, who filed the immigrant petition on his behalf, passed away following the decision, and in accordance with section 204(l) of the Act,[2] he qualifies to have his father's death deemed the equivalent of extreme hardship.

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[1] The approval of this application is conditioned upon departure from the United States and would have no effect if the Applicant does not depart.

[2] Section 204(1) of the Act provides that aliens who meet certain conditions may still have their adjustment and other related applications adjudicated notwithstanding the death of the qualifying relative. Specifically, this section provides discretion where an alien may apply for a waiver of inadmissibility even though the qualifying relative for purposes of extreme hardship has died. Moreover, in cases in which the deceased individual is both the qualifying relative for purposes of section 204(l) of the Act and the qualifying relative for purposes of an extreme hardship determination, the death of the qualifying relative is treated as the functional equivalent of a finding of extreme hardship. 9 USCIS Policy Manual B.4(C), https://www.uscis.gov/policymanual.

Upon de novo review, the record, as supplemented on appeal, includes additional evidence material to the issues that informed the Director's determination as well as evidence of additional hardship. Accordingly, we will remand the matter to the Director to consider this evidence 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.