U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19906429

Date: MAY 6, 2022

Appeal of Kansas City, Missouri Field Office Decision

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

The Applicant has filed a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, seeking permission to reapply for admission under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act). 8 U.S.C. § 1182(a)(9)(A)(iii). In [redacted] 2001, an immigration judge ordered the Applicant removed from the United States. In September 2001, the Board of Immigration Appeals dismissed the Applicant's appeal of the immigration judge's removal order. The Applicant has not yet departed the United States. If he departs, he would be inadmissible to the United States under Section 212(a)(9)(A)(ii)(II) of the Act. He therefore has filed a Form I-212 application, seeking conditional approval for permission to reapply for admission. *See* 8 C.F.R. § 212.2(j).[1]

The Director of the Kansas City, Missouri Field Office denied the Applicant's Form I-212 application as a matter of discretion, concluding that the favorable factors in his case were outweighed by the unfavorable factors, which included "the severity of [his criminal] conviction."

On appeal, the Applicant asserts that the Director erred by not properly weighing the positive and negative factors in his case and maintains that he has established eligibility for the Form I-212 application.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, other than an "arriving alien," who has been ordered removed under Section 240 of the Act, 8 U.S.C. § 1229a, or any other provision of the 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 (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)(i)-(ii) of the Act may seek permission to reapply for admission under Section

[1] A noncitizen may file a conditional Form I-212 application before departing the United States pursuant to the regulation at 8 C.F.R. § 212.2(j), in anticipation of applying for consular processing of an immigrant visa application abroad.

212(a)(9)(A)(iii) of the Act 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 a Form I-212 application 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 a Form I-212 application 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).

Generally, favorable factors that came into existence after a noncitizen has been ordered removed from the United States are given less weight in a discretionary determination. *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, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408, 416 (BIA 1998), need not be accorded great weight by the director in a discretionary determination).

II. ANALYSIS

The record shows that the Applicant entered the United States as a refugee in 1994 and adjusted his status to that of a lawful permanent resident in 1996. In 2000, he was convicted of Assault in the Second Degree, in violation of Sections 9A.36.021(1)(c) and 9A.08.020(2)(c) of the Washington Revised Code. He was also convicted of Extortion in the First Degree, in violation of Sections 9A.56.120(1), 9A.56.110, 9A.04.110(25)(a), (b), (c),[2] and 9A.08.020(2)(c) of the Washington Revised Code. According to the Information associated with these convictions, in [redacted] 1999, when the Applicant was 17 years old, he along with three individuals "did knowingly and intentionally assault [an individual] with a deadly weapon, to-wit: a knife, by threatening him with a deadly weapon." The Information further provides that the Applicant and the three individuals also "by means of a threat, to-wit: attempted to obtain cash or services from [the] victim by threat of harm and physical restraint, did knowingly attempt to obtain and/or did obtain property from the owner." The Applicant was sentenced to an imprisonment term of 13 months for his assault conviction, and an imprisonment term of 13 months for his extortion conviction.

In [redacted] 2001, an immigration judge ordered the Applicant removed from the United States to Moldova, for having been convicted of an aggravated felony. Specifically, the immigration judge concluded that the Applicant's Assault in the Second Degree conviction constituted an aggravated felony as defined under Section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). *See* Section 237(a)(2)(A)(iii) of the Act. The Board dismissed the Applicant's appeal of the immigration judge's

[2] Subsection (25) of Section 9A.04.110 of the Washington Revised Code has been renumbered to Subsection (28). *See* https://leg.wa.gov/CodeReviser/documents/sessionlaw/1988c158.pdf?cite=1988%20c%20158%20%C2%A7%204 (accessed on Apr. 29, 2022) and incorporated into the record of proceeding.

removal order in September 2001. The Applicant has not departed the United States but has been under an Order of Supervision and reporting regularly to U.S. Immigration and Customs Enforcement (ICE).[3]

Upon a careful review of the record, we conclude that the Applicant has not demonstrated eligibility for the Form I-212 application. Specifically, he has not shown that the favorable factors in this case outweigh the unfavorable ones. As such, we find that approval of the application is not warranted as a matter of discretion. *See Matter of Lee*, 17 I&N Dec. at 278-79. The evidence indicates that in 2004, the Applicant married his spouse, a United States citizen. In 2016, his spouse filed a Form I-130, Petition for Alien Relative, on his behalf, which the U.S. Citizenship and Immigration Services (USCIS) approved in 2017. The Applicant and his spouse have four United States citizen children, born in 2005, 2006, 2007, and 2011, respectively. His spouse and children offer letters in support of his Form I-212 application, explaining the emotional and financial support they receive from him. His spouse stated in an April 2021 letter that she has medical and mental health issues, including episodes of depression and anxiety, blindness in the left eye, hip pain, and difficulty walking.

According to a January 2021 mental health evaluation, the Applicant, his spouse, and children have experienced "financial and emotional hardship due to [the Applicant's] unresolved legal status." The evaluation states that the Applicant's spouse received corrective surgeries on her left leg "that essentially got rid of her disability," but that "the residual pains in her leg are still a factor in her daily existence, [but] the worst of her mobility limitations have been done away with." The evaluation also clarifies that the Applicant's spouse "has never been diagnosed with Social Anxiety, nor was ever provided treatment for it." But it states that she has reportedly experienced physical and mental health issues, including depression and anxiety, sleep disruption, headaches, troubling thoughts, and living "under a constant cloud of fear."

The Applicant also submits documentation indicating that he started a business in the United States in 2019 called [redacted] According to the January 2021 mental health evaluation, the business's "mission is to tend to children diagnosed with physical disabilities and to provide nurturing to disable children over the weekends." The Applicant also claims that he and his brother "started [a] business of remodeling and building homes" and that he and his spouse "had a cleaning services business" until 2020. A January 2021 letter from [redacted] indicates that the Applicant "has been employed with [redacted] as an owner operator since January 2017" and that he "has been one of the most productive and respected employees." The Applicant and his spouse own a home and several vehicles, for which they are still making mortgage and monthly payments.

The Applicant maintains that he has no family left in Moldova and could not find employment in Moldova as he does not speak the Moldavian language. The record shows that he has multiple family members in the United States, including his parents and siblings. His family members have presented letters in support of his Form I-212 application. His parents claimed in their letters that the Applicant helps them around the house, helps his father with his car repair business, and talks to them, and that if his application were denied, their mental and physical health would be negatively affected. Letters from the Applicant's other relatives, friends, pastor as well as minister discuss his involvement and

[3] It appears that Moldova is unwilling to accept the Applicant, because he was never issued a Moldovan passport. Instead, the Applicant had a Union of Soviet Socialist Republics (USSR) passport.

volunteering work in his community as well as church, and note that his spouse and children would experience hardship if his Form I-212 application were denied. A letter from [redacted] indicates that the Applicant and his spouse have been foster parents and have made "a positive difference in the lives of foster children." A "New Client Agreement" shows that the Applicant and his spouse began working for [redacted] in 2020, and receive between $32,000 and $37,000 annually in compensation and a $470.99 room and board monthly stipend for fostering a child.

Notwithstanding the above discussed positive factors, this case includes significant negative factors. As discussed, the Applicant has been ordered removed from the United States for having been convicted of an aggravated felony, specifically, a crime of violence. *See* Sections 101(a)(43)(F), 237(a)(2)(A)(iii) of the Act. As specified in the immigration judge's [redacted] 2001 oral decision, the Applicant does not dispute the aggravated felony charge. Although the Applicant was 17 years old at the time he committed the offenses, he was charged and ultimately convicted as an adult, and sentenced to two separate imprisonment terms of 13 months for his assault conviction and extortion conviction. In addition, the Applicant admitted to going to the victim's home and then physically hitting him. He has not revealed the extent of the victim's injuries resulting from being physically hit. Moreover, according to the Information, during the commission of the offenses he and the three individuals used a deadly weapon, a knife, to threaten their victim, and then they used threat of harm and physical restraint to attempt to obtain and/or did obtain property from the victim. The severity of the offenses is a serious negative factor in this case.

Furthermore, the Applicant has not fully accepted responsibility for his actions that led to his convictions. In an April 2021 letter, which he offers on appeal, he claimed that he drove a group of people to the victim's home. He then knocked on the victim's door and asked him to come outside. The Applicant alleged that after coming outside, the victim "began yelling," and he "attempted to calm [the victim] down," but that "[the victim] began to get aggressive with [him]." The Applicant stated that "out of self-defense[, he] hit [the victim]." The Applicant said that the group of people he was with then "grabbed [the victim] and placed him in [the Applicant's] car" and he drove to "behind the apartments." After the victim and the group of people the Applicant was with "came to an agreement" about "some money being owed," "[he] drove [the victim] back to the apartments."

Similarly, during his removal proceedings before an immigration judge, the Applicant testified in [redacted] 2001 that he drove his "friends" to the victim's home, because "if people ask me to do any favor, I will do the favor." He admitted to "ask[ing the victim] to come out [of his home] and I told him, I told to that guy, people want to talk to you." The Applicant then testified that his "friends" and the victim "started to argue, and "[the victim] started to use his hands and I, I don't know how this happened, you know, but as a defense whatever, you know, I, I hit him." He testified that his "friends" "told to that guy [the victim], get to the car so he got to the car and we just moved to another place." "[The victim] was in my car. He sat in my car. I took him from his house so I had to bring him back to his house. And I did."

In his retelling of the circumstances surrounding his convictions, the Applicant repeatedly minimized his actions that led to his convictions and attempted to justify physically hitting the victim. Indeed, the immigration judge observed in his [redacted] 2001 oral decision that the Applicant "very significantly minimized the extent of [his] criminal misconduct," claiming that "he was simply involved in some

kind of 'fight.'" The immigration judge, however, noted "that misconduct, as described by the [Applicant,] would certainly not arise to the level to which he entered the pleas of guilty to [Assault in the Second Degree and Extortion in the First Degree]."

The seriousness of the Applicant's crimes, which involved the use of force and a deadly weapon, his two separate imprisonment terms of 13 months for his two convictions, and his failure to fully accept responsibility for his criminal conduct are serious negative factors, and they outweigh the positive ones in this case. *See Matter of Tin*, 14 I&N Dec. at 373-74. We note that most of the positive factors in this case, including those concerning his spouse, children, businesses, volunteering work, and involvement in his community and church, came into existence after he was ordered removed from the United States. Thus, they are afforded less weight in our discretionary determination. *See Garcia-Lopes*, 923 F. 2d at 74; *Carnalla-Munoz*, 627 F. 2d at 1007.

III. CONCLUSION

Upon a review of the record before us, we find that the Applicant has not established he merits approval of his Form I-212 application because the favorable factors in this matter do not outweigh the unfavorable ones. We will therefore dismiss his appeal of the Form I-212 application denial as he has not demonstrated that the application should be granted in the exercise of discretion.

ORDER: The appeal is dismissed.