U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19413014

Date: MAY 6, 2022

Appeal of Los Angeles, California 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 advance 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 Los Angeles, California Field Office denied the Form I-212, as a matter of discretion, concluding that the favorable factors did not outweigh the unfavorable factors in the case. On appeal, the Applicant submits additional evidence and asserts that the positive factors in his case outweigh any negative factors.

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 dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides in relevant part that any noncitizen 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 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 contiguous 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 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).

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 Applicant is currently in the United States and seeks conditional permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before he departs.[1] He does not contest that he will be inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure for having been previously ordered removed. The only issue on appeal is whether the Applicant has demonstrated that approval of his Form I-212 is warranted as a matter of discretion.

The record reflects that the Applicant, a national and citizen of Honduras, entered the United States without being admitted in September 2004. In [redacted] 2007, the Applicant was apprehended by immigration authorities and placed in removal proceedings. At his removal hearing in [redacted] 2007, the Applicant was granted voluntary departure until [redacted] 2007, with an alternate order of removal to Spain or Honduras. The Applicant appealed the matter to the Board of Immigration Appeals (the Board), which dismissed the appeal and affirmed the Immigration Judge's decision in July 2009. The Board granted him voluntary departure until [redacted] 2009. Subsequently, the Applicant filed a "motion for a stay of removal and voluntary departure" that was denied, and a "petition for review" that was dismissed, by the U.S. Court of Appeals for the Ninth Circuit in 2010. Because he did not voluntarily depart, the grant automatically became an order of deportation. The Applicant did not leave and has been residing in the United States since that time. In [redacted] 2013, he married a U.S. citizen who subsequently filed a Form I-130, Petition for Alien Relative, on his behalf, which was approved in August 2019.

In support of the Form I-212, the Applicant submitted a personal statement; birth certificates for his two children (born in 2011 and 2014); a business license for his barber shop; U.S. income tax returns; letters of support from customers and friends; a residential lease agreement; billing statements; family photographs; and information about country conditions in Honduras. The Director acknowledged that there were favorable considerations in the Applicant's case, including his marriage to a U.S. citizen and approved Form I-130, family ties in the United States, the prospect of general hardship to his family, and difficult conditions in Honduras. The Director determined, however, that these positive factors were insufficient to overcome the negative impact of the Applicant's entry into the United States without inspection, 2007 misdemeanor grand theft conviction in California, unlawful presence in the United States since 2004, working in the United States without authorization, and disregard for the rulings of the Immigration Judge, the Board, and U.S. Court of Appeals for the Ninth Circuit.

[1] The approval of the Form I-212 under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if he failed to depart.

With the appeal, the Applicant provides declarations from himself and his U.S. citizen spouse, medical records from 2021 relating to his anxiety and abdominal pain, and his California Criminal History Information.[2] He also submits bank statements, the couple's 2020 U.S. income tax return showing total income of $160,480, and their residential lease agreement.

In his declaration, the Applicant expresses remorse for his misdemeanor grand theft conviction in 2007. He indicates that he has previously worked as a dishwasher, activities assistant, and activities director at a nursing home. After leaving the nursing home, he explains that he worked as a barber and later opened his own shop that he currently operates. The Applicant discusses his relationship with his spouse and two children, stating that they "are a very close family and like spending time together." He asserts that his spouse sometimes manages the barber shop and also drives part time for a food delivery service, but that he primarily supports his family. The Applicant further states that he has contributed to the community through hiring two men who were recently released from prison and through training them to work as barbers at his shop. In addition, Applicant claims that he has recently began to suffer from anxiety attacks and that a physician from an urgent care clinic prescribed Hydroxyzine for his condition.

The declaration from the Applicant's spouse describes her husband as "a very good person" and discusses how their relationship developed. She indicates that they started living together in 2010 and have two children (now ages 10 and 8). The Applicant's spouse asserts that they "are a very close family and like spending time together." She further states that she sometimes helps mange the barber shop and works "part time as a nanny" while the Applicant primarily supports the family. In addition, she contends that "[i]t would be devastating" if her husband could not remain in the United States and that she "would miss him terribly." She also expresses concern about the difficult conditions in Honduras.

The Applicant asserts on appeal that the favorable factors in his case substantially outweigh any unfavorable factors. He contends that "[h]is order of deportation is over ten (10) years old, he has rehabilitated himself and chosen to contribute to society by assisting other folks with their rehabilitation." The Applicant further argues "he has family responsibilities raising two (2) young children, he suffers from anxiety and panic attacks and surely a separation from his immediate family would seriously exacerbate this problem, and finally his wife would lose the love of her life."

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 his 2004 entry into the United States without being admitted, his convictions for misdemeanor grand theft (2007) and driving on a suspended license (2011), noncompliance with his voluntary departure grant and removal order, longtime unlawful residence in the United States, and unauthorized employment. The positive factors include the Applicant's longtime U.S. residence, family ties in the United States, financial and emotional hardship to his family and himself, his medical condition, his contribution to the rehabilitation of others, and difficult conditions in his native Honduras.

[2] This information indicates that he was convicted of misdemeanor grand theft in 2007 and driving on a suspended license in 2011.

While there is no dispute that the Applicant's family in the United States will be negatively affected if he must remain abroad for the entire inadmissibility period, any hardships to the Applicant's spouse and children have diminished weight in the discretionary analysis because his marriage and the birth of his children occurred after he was ordered removed. Further, the Applicant has not shown that his spouse is unable to provide financial and emotional support to their children. Nor is there evidence that his spouse would not be able to continue her current employment, make other arrangements for childcare, or otherwise supplement her income in the Applicant's absence. Regarding the claimed medical hardship to the Applicant, his health records do not indicate that that his anxiety and abdominal pain prevent him from working or carrying out other daily activities, or that he would be unable to receive adequate health care if he must remain abroad until his inadmissibility period expires.

We acknowledge the country information for Honduras and recognize that the Applicant may experience difficulties if he must remain there for the entire inadmissibility period. However, we note that the Applicant lived in Honduras until he was almost 17 years old, and he has not identified the locality where he would be likely to reside in Honduras, the employment opportunities and medical care available there, or the risks to his personal safety and security in that specific locality. Furthermore, although the Applicant claims that he regrets his grand theft violation, he does not acknowledge his arrest and conviction for driving on a suspended license.

We recognize that there are several favorable factors in the Applicant's case, including his family ties in the United States, the emotional support he provides his family, the hardship he and his family will experience as a result of separation, the length of his presence in the United States, and the approved Form I-130 filed on his behalf. However, the approved Form I-130 and the claimed emotional and economic hardship to the Applicant's spouse and children that would result from his absence have diminished weight in the discretionary analysis, because the Applicant's marital relationship, children, and related equities came into existence after he had been ordered removed. The Applicant's additional favorable equities include his employment, payment of taxes, assistance to others with their rehabilitation, and difficult country conditions in Honduras. This evidence and the positive equities relating to his family, however, are insufficient to overcome the adverse impact of the Applicant's 2004 U.S. entry without admission, two convictions in 2007 and 2011, noncompliance with his voluntary departure grant and removal order, unauthorized employment, and period of unlawful residence in the United States.

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.