U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13680149

Date: MAY 9, 2022

Appeal of Philadelphia, Pennsylvania Field 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.

The Director of the Philadelphia, Pennsylvania Field Office denied the application. The Director concluded that the Applicant would be inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), upon her departure from the United States because an Immigration Judge ordered her removed in 2010. The Director further concluded that the negative factors in this case outweigh the equities. On appeal, the Applicant asserts that the equities outweigh the negative factors in this case.

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, 8 U.S.C. § 1182(a)(9)(A)(ii), 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 an alien 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 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. *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); *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 admits that she will be inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), upon her departure from the United States because an Immigration Judge ordered her removed in 2010. Accordingly, we limit our analysis to whether approval of the application is warranted as a matter of discretion.

The Applicant initially entered the United States in 2005 as a visiting nonimmigrant and she overstayed her authorized period of stay. The Applicant was placed in removal proceedings in 2007 and an Immigration Judge ordered her removed in 2010. Although the Applicant appealed the Immigration Judge's decision, the Board of Immigration Appeals dismissed that appeal in 2012. Later in 2012, the Applicant filed a Form I-246, Application for Stay of Deportation or Removal, which was approved with an authorized period ending in November 2013. The Applicant filed a second Form I-246 in 2013; however, that application was denied. On [redacted] 2014, an Immigration Judge granted the Applicant voluntary departure not later than [redacted] 2014. Despite having been ordered removed in 2010 and having been granted voluntary departure not later than [redacted] 2014, the Applicant has remained in the United States. The Applicant has been working without authorization while living in the United States.

Two weeks before the end of the Applicant's 16-week voluntary departure period, the Applicant married her spouse, a naturalized U.S. citizen. In October 2014, U.S. Citizenship and Immigration Services (USCIS) approved a Form I-130, Petition for Alien Relative, establishing that she is the spouse of a U.S. citizen. In addition to the Applicant's marriage to a U.S. citizen, the Applicant asserts on appeal that her equities include: that she does not have a criminal record in the United States or in Indonesia; that she has lived in the United States since 2005; that she pays taxes; that she has good moral character; and that she is an "essential worker."

The Director acknowledged equities in this case, including the Applicant's marriage to a U.S. citizen, hardships the Applicant's spouse may experience either upon separation or relocation abroad with the Applicant, and affidavits regarding the Applicant's moral character. However, the Director correctly concluded that the negative factors in this case outweigh the equities. In addition to overstaying a visitor visa, being unlawfully present in the United States, and being ordered removed, the Applicant disobeyed the Immigration Judge's 2014 voluntary departure order, prolonging her unlawful presence. Violation of a voluntary departure order is a serious offense. A violator of a voluntary departure order

is ineligible for certain forms of relief for 10 years and is subject to a civil penalty of up to $5,000. *See* section 240B(d)(1) of the Act, 8 U.S.C. § 1229c(d)(1).

Equities acquired after a removal order has been entered bear diminished weight. *See Garcia Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991); *see also Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980). Accordingly, the Applicant's marriage to a U.S. citizen two weeks before the end of her voluntary departure period bears diminished weight.

The other equities that the Applicant identifies on appeal are offset by negative factors. Although the Applicant asserts on appeal that she does not have a criminal record in the United States or Indonesia, she has a record of repeatedly violating U.S. immigration laws and disregarding an order of an Immigration Judge. In addition, while the Applicant has lived in the United States since 2005, she has done so unlawfully. Further, although the record contains income tax returns filed jointly by the Applicant and her spouse for calendar years 2016-2018, the income she contributes to the household income, and for which she pays taxes, is earned by working without authorization. Likewise, while the Applicant asserts that she is an "essential worker," she has worked in the United States without authorization. Additionally, we acknowledge that the record contains affidavits of the Applicant's good moral character. However, the Applicant has repeatedly disregarded U.S. immigration laws and an order of an Immigration Judge, accrued years of unlawful presence, and worked without authorization.

We note that the Applicant discusses non-precedential AAO decisions in which we granted motions and sustained appeals. However, non-precedent decisions do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of an individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. For example, one non-precedent decision for an appeal we sustained in 2020, discussed by the Applicant on appeal, is distinguishable from the instant appeal because, in the non-precedent case, the applicant entered the United States unlawfully as a minor, not as an adult like the Applicant. Moreover, the applicant in the non-precedent case not only had a U.S. citizen spouse but also two adolescent U.S. citizen children, one of whom was diagnosed with hypothyroidism. In addition to providing care and support for the U.S. citizen spouse and children, the applicant in that non-precedent case also provided care and support for the spouse's parents, one of whom had "a documented joint deformity that causes him difficulties in performing daily life activities independently." The Applicant in this case does not assert that she has U.S. citizen children or that she provides care for her spouse's parents. Accordingly, even if that non-precedent case had precedential value, which it does not, it would be inapplicable to the fact pattern presented in this case.

Considering the totality of circumstances in this case, in particular given the diminished weight of the Applicant's after-acquired equities, the negative factors in this case outweigh the equities.

III. CONCLUSION

The Applicant has the burden of proof in seeking permission to reapply for admission. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Specifically, the negative

factors in this case outweigh the equities. *See Matter of Lee,* 17 I&N Dec. at 278-79; *see also Matter of Tin,* 14 I&N Dec. 371.

ORDER: The appeal is dismissed.