



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 19956121

Date: MAY 9, 2022

Appeal of Charlotte, North Carolina 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 he will be inadmissible upon departing the United States for having been previously ordered removed. Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion.

The Director of the Charlotte, North Carolina Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the record did not establish that the Applicant warranted a favorable exercise of discretion. On appeal, the Applicant submits new evidence and contends that his family will experience hardship if he is deported.

We review the questions in this matter *de novo*. See *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.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides that any foreign national, 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 foreign national convicted of an aggravated felony) is inadmissible. Foreign nationals 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 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).

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; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The record establishes that the Applicant is currently in the United States. 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 the United States. He therefore seeks conditional approval of his application for permission to reapply for admission prior to departing the United States, pursuant to the regulation at 8 C.F.R. § 212.2(j).¹

In denying the application as a matter of discretion, the Director noted that the Applicant provided no evidence in support of his Form I-212. The Director nevertheless acknowledged the positive discretionary factors reflected in the record as a whole, specifically that the Applicant had close family ties, including his U.S. citizen spouse and child, and did not appear to have major negative encounters with law enforcement. However, the Director concluded that these were outweighed by the negative factors, specifically the Applicant's removal order and his subsequent unlawful presence in the United States, and that he therefore had not established that he warranted a favorable exercise of discretion.

On appeal, the Applicant submits a personal statement, a statement from his spouse, a statement from his mother-in-law, financial documents, identity documents for the Applicant and his family members, a drawing by the Applicant's son, family photographs, a copy of his order of supervision from U.S. Immigration and Customs Enforcement (ICE), a copy of a letter from ICE regarding his stay of removal, and a copy of his approved Form I-130, Petition for Alien Relative, filed by his U.S. citizen spouse. In his statement, the Applicant contends that he wants to be able to be with his spouse and son and asserts that their family would suffer emotionally if he were deported.

The Applicant's new evidence on appeal directly addresses the Director's finding that the Applicant had not established that he warrants a favorable exercise of discretion, and is therefore material to his eligibility for the Form I-212. Consequently, we will return the matter to the Director review the new evidence in the first instance and to determine whether the positive factors, including the Applicant's family ties in the United States, his apparent lack of criminal history, and any hardships to the

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

Applicant and his family, sufficiently outweigh the negative factors in his case to warrant approval of the Form I-212 as a matter of favorable 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.