U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18132987

Date: MAY 10, 2022

Appeal of Nebraska Service Center 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 is inadmissible for having been previously ordered removed.

The Director of the Nebraska Service Center denied the application, concluding that the record did not establish that a favorable exercise of discretion was warranted in the Applicant's case. The Applicant appealed, but we rejected his appeal as untimely and remanded the matter to the Director for consideration as a motion. The Director denied the motion.

The matter is now before us on appeal. In the appeal brief, the Applicant submits additional evidence and asserts that the Director erred in not considering the positive factors and hardship to his United States citizen relatives in a discretionary analysis, among other arguments.

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

I. LAW

Section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), provides that any "arriving alien . . . who has been ordered removed under section 235(b)(1) [of the Act, 8 U.S.C. § 1225(b)(1),] or at the end of proceedings under section 240 [of the Act, 8 U.S.C. § 1229a,] initiated upon the arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years 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.

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any alien, 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."

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 re-embarkation 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. *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 was admitted to the United States as a lawful permanent resident on May 24, 1987. As a result of a criminal conviction for an aggravated felony, he was placed in removal proceedings and then removed from the United States on [redacted] 2000. Based upon an approved immigrant visa petition by his United States citizen spouse, the Applicant subsequently applied for an immigrant visa at the U.S. consulate in Kingston, Jamaica but was found to be inadmissible under section 212(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude.[1] In his initial decision, the Director found that in addition to his inadmissibility under sections 212(a)(2)(A)(i)(I) and 212(a)(9)(A)(ii) of the Act, the Applicant's convictions were also aggravated felonies per section 101(a)(43)(M) of the Act. Because section 212(h) of the Act bars a waiver for noncitizens previously admitted as lawful permanent residents who have been convicted of an aggravated felony since the date of admission, and a waiver is therefore not available for the Applicant's inadmissibility for a crime involving moral turpitude, the Director determined that his application for permission to reapply for admission did not warrant a favorable exercise of discretion.

On motion, the Director acknowledged the Applicant's claims regarding the positive discretionary factors in his case, and that his crimes were not particularly serious. However, he noted that the Applicant did not challenge the application of *Matter of J-F-D-*, 10 I&N Dec. 694 (INS 1963), to conclude that his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, for which no waiver is available to the Applicant, serves as a negative factor that warrants denial of the application as a matter of discretion.

[1] An immigrant visa application by his United States citizen mother was also refused due to the Applicant's conviction for a crime involving moral turpitude.

In his appeal, the Applicant makes several arguments: (1) he qualifies for a waiver under section 212(h) of the Act due to the extreme hardship faced by his qualifying relatives; (2) the Director failed to consider positive factors in his discretionary analysis; (3) the Director failed to analyze the nature and circumstances of his convictions; and (4) his application should be granted on humanitarian grounds.

Regarding the Applicant's first assertion, that he is eligible for a waiver under section 212(h) of the Act, we note that he has already been determined to be ineligible as a noncitizen lawfully admitted for permanent residence who was subsequently convicted of an aggravated felony.[2] Further, as his eligibility for this waiver is beyond the scope of this application for permission to reapply for admission, which applies only to exceptions for inadmissibility under sections 212(a)(9)(A) and (C) of the Act, it will not be considered here.

As for the weighing of unfavorable factors against favorable ones to determine whether to grant the Applicant's application for the exception under 212(a)(9)(A)(iii), the Director noted in his motion decision that the Applicant had not challenged the applicability of *Matter of J-F-D-*, 10 I&N Dec. 694 (Reg'l Comm'r 1963) in his motion. That decision held that an application for permission to reapply for admission is properly denied, in the exercise of discretion, to a noncitizen who is mandatorily inadmissible to the United States under another section of the Act. *See also Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964). On appeal, the Applicant does not address the applicability of these decisions but argues that several favorable factors, such as the non-violent nature of his crimes and the fact that he was convicted more than twenty years ago, should have been considered as outweighing the unfavorable factors in his case. However, because he has already been found inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and there is no waiver available for him, under these circumstances no purpose would be served by determining whether the Applicant merits approval of his application as a matter of discretion, as he would remain inadmissible. *See id.*

While we acknowledge the additional assertions made by the Applicant, he has not shown that the caselaw and international treaties he cites to in support of these assertions apply in this matter. Specifically, the Applicant cites *Matter of N-A-M-*, 24 I&N Dec. 336 (BIA 2007) and *Nethangi v. Mukasey*, 532 F.3d 150 (2d Cir. 2008), which involve the commission of a particularly serious crime by applicants for asylum and withholding of deportation and are not relevant to his eligibility for consent to reapply for admission. See Sections 208(b)(2)(A)(ii) and 241(b)(3)(B)(ii) of the Act, 8 U.S.C. §§ 1158(b)(2)(A)(ii) and 1231(b)(3)(B)(ii). Therefore, the Applicant has not shown that the Director erred in not considering the nature and circumstances of his convictions. He has also not demonstrated that the human rights declarations he cites to are controlling in this matter.

As the record indicates that the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act and there is no waiver available to him due to his convictions for aggravated felonies, his application for permission to reapply for admission will remain denied as a matter of discretion.

[2] The Director denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility [redacted] which sought a waiver under section 212(h) of the Act, on March 29, 2014, and we dismissed his appeal (2014 WL 7004310) on October 15, 2014.

ORDER: The appeal is dismissed.