U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18783594

Date: MAY 10, 2022

Motion on Administrative Appeals Office Decision

Form I212, 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 Los Angeles County Field Office denied the application, concluding that the record did not establish that a favorable exercise of discretion was warranted in the Applicant's case. We agreed and dismissed the subsequent appeal.

The matter is now before us on a motion to reopen. In the motion, the Applicant submits additional evidence and states that it shows hardship to her and her family as positive discretionary 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 review, we will dismiss the motion.

I. LAW

A motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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).

II. ANALYSIS

In her decision, the Director noted several unfavorable factors related to her immigration history, including the refusal of a visitor visa by the U.S. consulate in Yerevan, Armenia in March 2001, and her attempt to use another person's visa to enter the United States in [redacted] 2001. In addition, the Director noted that the immigration judge found inconsistencies in her 2003 asylum application regarding the date, place, and manner of her entry into the United States, as well as inconsistencies regarding the validity of the travel documents she used in traveling from Armenia. She further highlighted the inconsistency between the date of marriage stated on the Applicant's Form I-212, in January 2004, and the marriage certificate which indicated that she married her current spouse in February 2009. The Director concluded that the lack of clarity regarding the Applicant's entry into the United States showed a lack of respect for U.S. law, and that her use of fraudulent or invalid travel documents weighed negatively against her, and found that these factors outweighed the favorable factors in her case.

On appeal, we noted that, despite the Applicant's claims, the Director did consider her family ties in the United States as a favorable factor. However, while the Applicant clarified the conflicting dates regarding the date of her current marriage, we pointed out that two of her children were born after she was ordered removed in [redacted] 2006, and thus several of her statements regarding family ties in the United States were afforded reduced evidentiary weight. We further noted that her claims regarding her spouse's hardships and the persecution he would suffer if they relocated to Armenia were not supported by recent or detailed evidence.

With this motion, the Applicant first focuses on the hardship her husband would face if he were to accompany her in relocating to Armenia due to being a native of Azerbaijan. She submits four news articles published in April and May 2021 which describe new tensions between the countries over the long-disputed Nogorno-Karabakh region, including a six-week war in late 2020. We acknowledge the long history of conflict and ethnic tensions between Armenia and Azerbaijan shown in the record, and the unresolved nature of this conflict. But this new evidence makes no mention of ethnic Azeris being the target of persecution in Armenia, or that recent escalations have increased the level of any such persecution as the Applicant asserts. Further, although the Applicant does not mention the area of Armenia where she (and potentially her family) would relocate, the record indicates that she was born

and raised in [redacted] and the new evidence does not indicate that the city is threatened due to tensions in Nogorno-Karabakh.

The Applicant also submits on motion a psychological report from a Licensed Marriage and Family Therapist regarding her spouse. The therapist opines that the spouse suffers from Recurrent Abdominal Pain (RAP) and is frequently admitted to the emergency room, and that he experienced increased symptoms since 2004 due to the Applicant's immigration status.[1] She also states that if the Applicant were forced to relocate to Armenia, this would have "grave" health implications for the Applicant's spouse, as medical care in Armenia would be inadequate to treat this condition. However, these statements are not supported in the record by documentation from the spouse's treating physician explaining any such diagnosis or treatment for RAP, or the implications of his wife's relocation. In addition, the record lacks evidence concerning the state of medical care in Armenia, let alone the availability of treatment for any specific medical condition.

The therapist concludes the report by diagnosing the Applicant's spouse with chronic post-traumatic stress disorder (PTSD) and generalized anxiety disorder with panic attacks, which she reports stems from his experience in Armenia in the early 1990s, and stating that these conditions are worsening and that he needs immediate psychological treatment. However, we note that the report makes no mention of a previous diagnosis or treatment for these conditions. Further, in that the report's findings are based on a single interview with the Applicant's spouse,[2] we do not find them to reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional. As a result, the evaluation's conclusions must be considered speculative and of diminished evidentiary value.

We sympathize with the claims of hardship to the Applicant and her family and recognize the favorable factors in her case. But the new evidence submitted on motion does not add weight to those factors that is sufficient to overcome the unfavorable factors, which include multiple attempts to secure benefits through fraudulent documentation. As such, the application will remain denied.

ORDER: The motion is dismissed.

[1] Although the report links these increased symptoms to the Applicant's being "denied U.S. citizenship in 2004," the record indicates that their claimed common law marriage began in 2004, and that she was found ineligible for asylum and ordered removed in [redacted] 2006.

[2] A letter was submitted from a different therapist with the Applicant's initial I-212 filing. That letter indicated that the therapist had been seeing the Applicant's spouse on a weekly basis since April 8, 2018 for "psychological issues caused by the long-standing immigration case for his wife," but was dated April 12, 2018. The letter did not include a diagnosis or treatment history or plan, and is not referenced in the evaluation submitted on motion.