U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15757637

Date: MAY 17, 2022

Appeal of New York, New York 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 sections 212(a)(9)(A)(iii), (C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), (C)(ii).

The Director of the New York, New York Field Office denied the Form 1-212 as a matter of discretion, concluding that favorable factors did not outweigh the unfavorable factors in the 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. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will remand the matter for the entry of a new decision consistent with our analysis below.

Section 212(a)(9)(C) of the Act provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than one year, or has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible.

Noncitizens found inadmissible under section 212(a)(9)(C) of the Act may seek permission to reapply for admission under section 212(a)(9)(C)(ii), which provides that inadmissibility shall not apply to a noncitizen seeking admission more than 10 years after the date of last departure from the United States if, prior to the reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

The Applicant was admitted to the United States with a B-2 visitor visa in 1990. He overstayed his visa and was ultimately ordered deported in absentia in 1997. He later departed the United States to Mexico, and reentered the United States without inspection, admission, or parole in 2004. In [redacted] 2008 he was apprehended and detained by U.S. Immigration and Customs Enforcement. His deportation order was reinstated, and he was removed to Mexico at U.S. government expense in [redacted] 2008, where he currently resides.

The Applicant's U.S. citizen parent filed a Form I-130 immigrant petition on the Applicant's behalf, which was approved. He attended an immigrant visa interview with the U.S. Department of State

(DOS) in 2018 during which a consular officer determined his inadmissibility under section 212(a)(9)(C) of the Act. More than 10 years has elapsed since his removal from the United States, and he has remained outside the United States during this time. The issue on appeal is whether the Applicant has established that he merits approval of his application for permission to reapply for admission in the exercise of discretion.

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, 373-74 (Reg'l Comm'r 1973).

The Director determined that the Applicant's favorable factors did not outweigh the unfavorable factors and denied the application as a matter of discretion. She indicated that she "carefully considered the evidence presented and weighed the favorable and unfavorable factors," concluding that the Applicant's "inadmissibility and other negative factors outweigh the favorable factors [he] acquired after the removal order was entered against [him]."

The Director acknowledged that the Applicant's U.S. citizen parents suffer from serious health issues, noting that he has four U.S. citizen siblings in the United States who could financially support his parents and attend to their care. She addressed the Applicant's asserted financial hardships, indicating that the Applicant likely experiences a lower standard of living in Mexico working as an "advanced auto technician" than he would in the United States, concluding the financial hardship that he suffers would not be *unusual* for the Applicant to experience should the application not be approved. The Director also discussed the unfavorable factors in this case including the Applicant's overstay of his nonimmigrant visa, his failure to appear for his deportation proceedings which resulted in deportation order in absentia, his failure to comply with his deportation order, his subsequent entry into the United States without inspection, his unlawful presence in the United States, the reinstatement of his removal order, and his removal to Mexico at the U.S. government's expense.

On appeal, the Applicant contends that the Director erred by failing to appropriately consider and weigh the submitted evidence. Upon review, we conclude that the Director erred by applying an incorrect standard in evaluating the evidence in the record. Specifically, the Director indicated that the Form I-212 instructions included "*unusual* hardship to U.S. citizen or lawful permanent resident relatives, yourself, or your employer" (emphasis added) as a factor to consider when weighing the equities in a Form I-212 application. However, the instructions to the Form I-212 do not list "*unusual* hardship to U.S. citizen [] relatives…."; rather, the instructions simply indicate that hardships to these individuals will be considered as favorable factors within the Form I-212 discretionary analysis.[1]

[1] *See* the Form I-212 instructions at https://www.uscis.gov/i-212.

Further, while the Director listed some of the favorable factors USCIS considers when determining whether a Form I-212 warrants approval as a matter of discretion, the denial did not sufficiently address the evidence of additional significant favorable factors in the record. For example, the Applicant's immigration violations occurred more than a decade ago, he resided outside the United States for over ten years prior to filing the application and has no criminal record. These are favorable factors which may be considered when contemplating whether the Applicant has respect for law and order, his good moral character, and also whether he has reformed or rehabilitated since his prior immigration violations.

On appeal, the Applicant also provides additional documentation which indicate that his own hardships have increased since the filing of the application. Specifically, he has been diagnosed with cardiac medical conditions (ischemia and angina) and has provided copies of his medical records and general information about these heart conditions. He also states that he was terminated from his long-term employment as an auto mechanic at a car dealership in Mexico due to the economic impacts resulting from the COVID-19 pandemic and has provided the first page of a lawsuit (with a partial English translation) that he has filed against his former employer seeking reinstatement of employment based upon being unjustifiably dismissed from his former position. The evidence provided on appeal also includes affidavits from his family members describing their hardships in caring for their elderly parents in his absence.

For the reasons discussed, the Director's decision does not reflect a proper analysis of the favorable and unfavorable factors in the Applicant's case, as required. Thus, we are remanding the matter for the Director to review all positive and negative factors in the appropriate context and with consideration to all evidence presented, including the additional evidence presented on appeal.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.