U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13195107

Date: MAY 18, 2022

Appeal of New York City 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 from the United States for having been previously ordered removed. *See* section 212(a)(9)(A)(ii) of the Act. 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 New York City Field Office denied the Form I-212, Application for Permission to Reapply for Admission, concluding that the Applicant did not establish that a favorable exercise of discretion was warranted in his case. On appeal, the Applicant contends that the Director erred in finding that the unfavorable factors in his case outweighed the favorable factors.

We review the questions raised in this matter *de novo*. *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 for further proceedings.

The Applicant is currently in the United States and seeks permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before departing the United States.[1] He does not contest that he has an outstanding order of removal and will be inadmissible under section 212(a)(9)(A)(ii) of the Act once he departs.[2] The only issue on appeal is whether the Applicant has demonstrated that approval of his Form I-212 is warranted 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

[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.

[2] The record indicates that the Applicant entered the United States in 2000 without being inspected, admitted, or paroled. His request for asylum in the United States, filed in 2011, was denied in 2012, and he was ordered removed to China. The Board of Immigration Appeals dismissed the Applicant's subsequent appeal in 2013. The Applicant did not depart and continues to reside in the United States.

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 burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

In denying the application, the Director determined that the Applicant's unfavorable factors outweighed the favorable factors. The Director found that the Applicant's unfavorable factors included his entry into the United States without inspection, his failure to comply with his removal order, and his unlawful presence in the United States. The Director concluded that although denying the Applicant admission to the United States would have adverse effects, the Applicant's inadmissibility, and other undefined negative factors, outweighed the favorable factors acquired after the Applicant's order of removal.[3] On appeal, the Applicant contends that the Director erred by failing to appropriately consider and weigh the submitted evidence.

Upon review, we agree that the Director did not adequately consider and weigh the submitted evidence. In the present case, the Director only identified unfavorable factors related to the Applicant's removal order, and concluded that the unfavorable factors outweighed the positive factors without providing any analysis or explanation to support that conclusion. Although the Director listed the favorable factors USCIS considers when determining whether a Form I-212 warrants approval as a matter of discretion, she did not address the evidence of additional favorable factors in the record. For example, the Applicant has lived in the United States for 22 years, has no apparent criminal history, and has two U.S. citizen children and a U.S. citizen spouse in the United States. The Director also failed to specifically address evidence of additional positive equities in the record, including the Applicant's employment history, payment of taxes, and support to his family. We note that the Applicant submitted substantial documentation, including state and federal tax returns, bank statements, a psychiatric evaluation for his spouse, and a statement from his spouse addressing her claimed physical, emotional, and financial hardship upon separation or relocation to China. The Director concluded, without analysis, that the negative factors outweighed the favorable factors acquired after the order of removal was entered against the Applicant.

While we agree that "after-acquired equities" need not be afforded full weight in the discretionary analysis, it does not mean that they should not be given any weight at all. Here, the Applicant states that it is not possible for his spouse to relocate to China with him because they could not find adequate employment or mental health care to treat her mental illness. The Director did not address the claimed health-related and economic hardships to the Applicant's spouse and evidence of the spouse's diagnosis, psychiatric treatment report, and financial documents. In addition, the Director erred by not considering the hardships the Applicant claimed he and his family would face in China and by not

[3] Equities that came into existence after a noncitizen has been ordered removed from the United States ("after-acquired equities"), including family ties, have diminished weight for purposes of assessing favorable factors in the exercise of discretion. *See Garcia-Lopes v. INS*, 923 F.2d 72, 74 (7th Cir. 1991) (less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408, 416 (BIA 1998), need not be accorded great weight by the director in a discretionary determination).

addressing the additional evidence the Applicant submitted in support of a favorable exercise of discretion.

In weighing favorable and unfavorable factors, the Director identified only the Applicant's immigration violations as negative factors. As the Director's decision does not reflect a proper analysis of the favorable and unfavorable factors in the Applicant's case, as required, we will return the matter for the Director to consider the entire record and to determine whether the preponderance of the evidence is sufficient to warrant a conditional approval of the Applicant's Form I-212 in the exercise of discretion when all positive and negative factors are weighed together.

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