U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19689109

Date: MAY. 18, 2022

Appeal of Los Angeles, California Field Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant seeks advance 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).

The Director of the Los Angeles, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, concluding the Applicant did not establish a favorable exercise of discretion was warranted. On appeal, the Applicant does not submit additional evidence, but asserts the Director did not take into consideration all relevant positive factors in adjudicating the application.

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 *de novo* review, we will dismiss the appeal because the Applicant has not met this burden.

I. LAW

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides in relevant part that any noncitizen 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 noncitizen convicted of an aggravated felony) is inadmissible.

Noncitizens who are 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 contiguous territory, the Secretary of Homeland Security has consented to the noncitizen'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 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).

Generally, favorable factors that came into existence after a noncitizen has been ordered removed from the United States, are given less weight in a discretionary determination. *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).

II. ANALYSIS

The Applicant is currently in the United States and seeks conditional permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before he departs.[1] The Applicant does not contest that he will be inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure for having been previously ordered removed. The only issue on appeal is whether the Applicant has demonstrated that approval of his Form I-212 is warranted as a matter of discretion.

The record reflects that the Applicant, a national and citizen of El Salvador, entered the United States without inspection and admission or parole in 2000.[2] U.S. Citizenship and Immigration Services (USCIS) withdrew the Applicant's temporary protected status in 2006 and he was ordered removed in 2011. The Applicant filed the current Form I-212 application in January 2020.

The Director denied the application as a matter of discretion, concluding that the Applicant's negative factors outweighed the positive factors. The Director emphasized that the Applicant entered the United States illegally without inspection both in 1993 and 2000 and pointed to a series of vehicular criminal violations he committed between 2002 and 2005, including two involving operating a vehicle while under the influence of alcohol. The Director further discussed the Applicant's lack of cooperation with U.S. Immigration and Customs Enforcement (ICE) agents and his refusal to comply with his removal, and other court orders. In sum, the Director concluded that these negative factors outweighed the Applicant's listed positive factors, such as his U.S. citizen spouse and other family ties in the United States.

On appeal, the Applicant contends that the Director ignored his positive factors, focused on immaterial negative factors, and misstated the facts of the case. The Applicant acknowledges his criminal history but asserts that he has had no criminal violations since his last in 2005. The Applicant states that he and his U.S. citizen spouse have had a relationship since 1989 and emphasizes that his entire immediate family lives in the United States, including three biological children and two stepchildren

[1] The approval of the Form I-212 under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if he failed to depart.

[2] The record also reflects that the Applicant entered the United States without inspection or parole in 1993, was apprehended by U.S. Border Control agents and he was issued a voluntary removal order. It is not clear from the evidence on the record whether or not the Applicant complied with this order, but it does indicate he returned to El Salvador sometime between this order and his reentry to the United States in 2000.

he cares for with his spouse. The Applicant asserts that the Director improperly did not consider his length of time in the United States, his family ties here, and the evidence of his good character. The Applicant further contends that the Director overemphasized his illegal reentry in 2000, his immigration history, and asserts that his criminal history is "trivial."

We have reviewed the entire record, and for the reasons explained below, we agree with the Director that the evidence is insufficient to show that a favorable exercise of discretion is warranted.

The most significant negative factors in the Applicant's case are his substantial unlawful presence in the United States after his temporary protected status was withdrawn in 2006, his illegal entries without inspection, and his series of criminal violations while residing here. The positive factors include the Applicant's longtime residence and family ties in the United States, and the need for his services to be a caretaker and provider for his spouse, children, and stepchildren.

As an initial matter, although we acknowledge the Applicant's U.S. citizen spouse, his children, and his stepchildren, the Applicant has not sufficiently documented the asserted need for his services in the United States. For instance, the Applicant's spouse emphasizes that her son with autism, the Applicant's stepson, would face substantial hardship if the stepson was forced to move to El Salvador, including losing needed medical care and therapy. However, these potential hardships to the Applicant's stepson could be avoided if the Applicant's spouse remains in the United States, and the Applicant has not otherwise sufficiently documented his stepson's hardship if he remained in the United States. Further, the Applicant does not describe or document the care he provides for his stepson with autism, but only vaguely indicated that he is "exceptionally helpful" to his stepson. In addition, submitted school documentation reflects that the Applicant's stepson was 18 years old when the application was filed, "passing all of his classes," on track to graduate from high school, and making plans to attend college. Although we acknowledge that autism is a difficult condition for a parent to manage, there is little evidence to support that the Applicant's stepson would be substantially impacted by the Applicant's departure and there is no documentation to substantiate the Applicant is significantly involved in his stepson's care.

Likewise, the Applicant did not sufficiently substantiate the emotional and financial impact his departure would have on his family.[3] For example, the Applicant's spouse stated that her husband "is also contributing financially at home and [the one] who helps me with financial expenses." Although the Applicant provides some evidence of the family's annual income, it does not explain in detail the financial impact his absence from the family would have or sufficiently indicate why he could not continue to support his family while in El Salvador. The Applicant also stated that he had only recently began to develop a relationship with his biological daughter, conceived with his U.S. citizen spouse, noting he recently began planned dinner dates with her. Further, a psychological evaluation submitted for the Applicant's spouse indicates that the Applicant and his biological daughter conceived with his spouse have only recently developed a relationship and it is in the process of "rebuilding." Otherwise, the record includes little indication or evidence to demonstrate any relationship he may have with any of his other children in the United States, including his two other undiscussed biological children. The

[3] The Applicant indicated in a USCIS interview conducted in August 2017 that he has a daughter conceived with his current U.S. citizen spouse (born in 2007), two children in El Salvador (born in 1997 and 1998), and two other biological U.S. citizen children conceived with other partners (in 1993 and 2010). The Applicant further asserts that he cares for his two stepchildren whom his spouse conceived with other partners, including his stepson with autism.

record includes no affidavits or other statements from any of his children or stepchildren to substantiate their relationship with their father or the impact his departure would have on them. The statements in the record and the lack of supporting documentation leave uncertainty as to the Applicant's claimed substantial family ties in the United States, particularly considering he only recently reconciled with his biological daughter and decided to marry his spouse after he was ordered removed and placed in ICE custody in 2016. As noted, generally, favorable factors that came into existence after a noncitizen has been ordered removed from the United States, are given less weight in a discretionary determination. *See Garcia-Lopes v. INS*, 923 F.2d at 72, 74 (less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d at 1004, 1007 (an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. at 408, 416, need not be accorded great weight by the director in a discretionary determination).

Beyond this, we acknowledge the Applicant submitted a psychological evaluation for his spouse emphasizing that that she suffers from generalized anxiety disorder that would be made worse by the Applicant's departure, including her facing a potentially "severe emotional impact" and a "psychiatric crisis" if her husband departs for El Salvador. The grounds provided by the psychologist for these potentially severe impacts note the Applicant's spouse's fear of being destitute in her husband's absence and the loss of her husband's relationship with their biological daughter. However, as discussed, the Applicant does not sufficiently detail or document the financial impact of his departure and the record appears to indicate that his relationship with his biological daughter only begun after he was placed in ICE custody. Further, the statement of the Applicant's spouse includes little mention of anxiety related to his departure, or fears of being financially destitute, but she vaguely indicated that her husband contributes to the family expenses. Likewise, the statement of his U.S. citizen spouse also does not mention any impact the Applicant's departure would have on their daughter.

In contrast, the record includes evidence of a lack of good moral character and respect for law and order on the part of the Applicant. The Applicant submits his criminal record reflecting that he was arrested and convicted of a series of crimes while in the United States, including driving under the influence of alcohol in 2002, driving with a suspended license in 2004, and driving under the influence of alcohol with a suspended license in 2005. The Applicant emphasizes on appeal that he has not been arrested since his last violation in 2005 and that these convictions were all expunged by the State of California after he served the terms of his sentences.

However, the Applicant provides no details related to these prior convictions, beyond general conviction and sentencing information. Further, he does not express remorse for these crimes, nor does he indicate how he has been reformed or rehabilitated, beyond serving the terms of his sentences. In fact, on appeal, the Applicant refers to these crimes as "trivial," suggesting that his has not accepted full responsibility for these incidents. We would disagree with the Applicant that his crimes were trivial, as driving while under the influence alcohol over the legal limit is a highly dangerous activity, an offense he was convicted of twice. As noted by the Director, the Applicant's subsequent offenses came soon after his sentencing for the prior, including in one case only three months later, a violation of the terms of his sentencing and probation. It is also noteworthy that the Board of Immigration Appeals (BIA) denied the Applicant's asylum application in 2012, and in doing so, discussed his prior convictions, as well as him testifying that "he failed to appear for Court dates [related to these crimes] up until 2009." The BIA indicated that this reflected "a history and unwillingness to follow Court orders." Here, the Applicant does not specifically describe his arrests and convictions in detail to fully

ascertain their seriousness, nor does he explain how he has been reformed or rehabilitated, beyond indicating that they were expunged after he served the terms of his sentences.

The Applicant has also violated immigration laws by entering the United States without inspection in 1993 and 2000 and by not adhering to a removal order in 2011. Further, on appeal, the Applicant contends that the Director misstated the facts by stating that his temporary protected status was withdrawn in 2006 due to his crimes discussed above. However, the record reflects the Applicant's temporary protected status was withdrawn in 2006 when USCIS issued a notice of intent to withdraw in 2005 related to his discussed crimes, and that he failed to respond to this request. Therefore, the record includes substantial evidence of compelling negative factors.

We acknowledge evidence of favorable factors in the Applicant's case, including the potential hardship his absence would cause his U.S. citizen spouse and his children, the length of time he has spent in this country, and the time that has passed since his removal order. However, this evidence is insufficient to overcome the adverse impact of the Applicant's prior arrests, the lack of detail and evidence as to how he has been reformed or rehabilitated, his unlawful presence in the United States since 2006, and the fact that his most compelling positive factors were acquired after he was ordered removed in 2011.

Consequently, we agree with the Director that the Applicant has not demonstrated that the positive factors in his case considered individually, and in the aggregate, outweigh the negative factors. As such, the Director properly dismissed the application since a favorable exercise of discretion was not warranted. The Applicant's request for permission to reapply for admission to the United States remains denied.

ORDER: The appeal is dismissed.