U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17123852

Date: MAY 23, 2022

Appeal of Los Angeles County, California Field Office Decision

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

The Applicant, a native and citizen of Mexico, seeks permission to reapply for admission to the United States under section 212(a)(9)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii), after having been previously removed from the United States.

The Director of the Los Angeles County, California Field Office denied the application, concluding that the Applicant did not establish that a favorable exercise of discretion was warranted in his case. On appeal, the Applicant submits new evidence and contends that the Director erred in finding that the negative factors in his case outweighed the positive equities.

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 remand the matter to the Director for entry of a new decision.

I. LAW

A foreign national who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i) of the Act. A foreign national is deemed to be unlawfully present in the United States if present after the expiration of the period of authorized stay or if present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act.

Section 212(a)(9)(C) of the Act provides that any foreign national 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.

Foreign nationals 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 foreign national 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 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. 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).

II. ANALYSIS

The application indicated that the Applicant entered the United States without inspection in 1988. The Applicant stated he subsequently departed and then re-entered the United States without being admitted on or about April 2000.[1] Since then, the Applicant claimed to have stayed in the United States until his departure to Mexico on or about August 2008, and that he has not returned.

The Director determined the Applicant was inadmissible under section 212(a)(9)(C)(i)(I) as he appeared to have accrued at least one year or more of unlawful presence in the aggregate and due to his departure and illegal return to the United States without being admitted. In her decision, the Director concluded the Applicant remained the requisite 10 years outside the United States to qualify for permission to reapply for admission under section 212(a)(9)(C)(ii). Specifically, the Director stated that the Applicant submitted evidence to demonstrate he has continuously lived in Mexico since his departure from the United States in 2008. However, the Director erred as the record did not include any probative evidence demonstrating when the Applicant left the United States and for how long he has remained outside of the United States.

The application identified the birth certificates of the Applicant's three Mexican-born children as evidence of the Applicant's 10-year absence from the United States. We disagree. The application instructions state that an applicant should submit evidence that relates to their departure and absence from the United States that covers at least 10 consecutive years, and that this evidence could include copies of entry/exit stamps from foreign countries in an applicant's passport; receipts for, or copies of, airplane tickets; registration of the applicant's residence abroad; utility bills in the applicant's name at the foreign address; employment records from the applicant's foreign job; and another other information that will establish the applicant's departure and absences from the United States. Form I-212, Instructions for Application for Permission to Re-apply for Admission Into the United States After Deportation or Removal, at 13 -14; see also 8 C.F.R. § 103.2(a)(1) (providing that "[e]very form, benefit request, or other document must be submitted . . . and executed in accordance with the form instructions" and that a "form's instructions are . . . incorporated into the regulations requiring its submission"). Therefore, we will remand the matter back to the Director to determine the Applicant's

[1] The Director specified that the Applicant returned to the United States on or about April 29, 2000. However, we do not find any reference to this date in the record. Furthermore, on appeal, Counsel states that the Applicant also departed and entered the United on or about 1995 in addition to this April 2000 date.

departure date from the United States and whether he remained outside the United States for the requisite period to qualify for permission to reapply for admission under section 212(a)(9)(C)(ii).

Moreover, the Director determined that a favorable exercise of discretion was not warranted in the Applicant's case. In denying the application, the Director determined that the Applicant's favorable factors, specifically no immigration violation since accruing unlawful presence, 10 years since last departure from the United States, U.S. citizen family in the United States, and the Applicant's good moral character, did not outweigh the negative equities. The Director found that his unfavorable factors included his unlawful presence, repeated violations of immigration laws, likelihood of a public charge, established life in Mexico, unauthorized employment in the United States, and no unusual or extreme hardship. Specifically, the Director determined 1) the birth certificate of his claimed U.S. citizen children did not specify the Applicant as the father or include his date of birth; 2) the record lacked evidence and letters of support attesting to the Applicant's good moral character and the hardship the Applicant and his family would experience; 3) the clearance letter did not have a certified translation; and 4) the record lacked evidence that his brother would offer the Applicant a position in his business.

With the appeal, the Applicant provides additional evidence including the clearance letter with a translation, amendments to one of the birth certificates, letters of support from various family members and friends, employment offer letters, and financial documents to address the deficiencies as identified by the Director. As the Applicant has submitted new and material evidence on appeal, we find it appropriate to remand the matter to the Director to reevaluate the submitted evidence and consider whether the Applicant merits a favorable exercise of discretion.

III. CONCLUSION

We find it appropriate to remand the matter to the Director to determine 1) if the Applicant remained outside the United States the requisite 10 years after his last departure, and 2) in light of the new evidence, determine in the first instance whether the Applicant merits a favorable exercise of discretion.

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