U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17850110

Date: MAY 23, 2022

Appeal of Philadelphia, Pennsylvania 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.

The Director of the Philadelphia, Pennsylvania Field Office denied the application. The Director concluded that the Applicant would be inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), upon his departure from the United States. The Director further concluded that the negative factors in this case outweigh the after-acquired equities. On appeal, the Applicant asserts that the Director "erred in denying his I-212 application by not balancing all pertinent favorable factors." The Applicant further asserts that the Director erred by issuing a decision "a mere 21 days after the application was filed."

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.

I. LAW

Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), provides that any noncitizen, 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.

Noncitizens 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 reembarkation 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 noncitizen 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); *see also Matter of Lee, supra*, at 278 (finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character, and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience").

II. ANALYSIS

The Applicant does not contest that he will be inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), upon his departure from the United States. Specifically, despite being ordered to depart the United States voluntarily not later than February 19, 1999, the Applicant did not depart, immediately triggering an order of removal from an Immigration Judge. The issues on appeal are: (1) whether the Director erred by concluding the negative factors in this case outweigh the equities; and (2) whether the Director erred by issuing a decision within 21 days after the filing date of the Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal.

The Applicant entered the United States on or about April 8, 1997, as a nonimmigrant visitor authorized to remain until April 28, 1997. The Applicant overstayed and was placed in removal proceedings. On [redacted] 1999, an Immigration Judge ordered the Applicant to depart the United States voluntarily not later than [redacted] 1999. The Applicant again overstayed, thereby triggering an order of removal effective immediately. The Applicant has remained in the United States, working without authorization for more than 20 years.

The Director found the Applicant's "failure to comply with the voluntary departure order is the most significant negative factor in [this] case." The Director observed that the Applicant "willfully remained in the United States in violation of the voluntary departure order and subsequent alternate order of removal, seemingly never intending to comply with any order from the Immigration Judge or BIA which did not support your attempt to remain in the United States."

The Director observed that "afford[ing] diminished evidentiary weight to the hardship faced by a spouse where the marriage was entered into with the knowledge that the respondent had been ordered removed . . . was not an abuse of discretion," citing *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992). Specifically, in *Ghassan*, a U.S. citizen married a non-citizen while the non-citizen's deportation proceedings were still being conducted, before an eventual deportation order. *Id.* at 633. The Fifth Circuit found that, in assessing whether negative factors outweigh equities, considering the U.S. citizen's "previous knowledge [that the non-citizen may be ordered deported] seems eminently equitable." *Id.* at 635 (citing *In re Correa*, 19 I&N Dec. 130, 134 (BIA 1984)).

The Director further observed that the Applicant met his wife 15 years after he failed to depart the United States voluntarily, while he was working without authorization as an automotive mechanic, and that the two married the following year. The Director also observed that the Applicant's spouse briefly served in the United States Army for 10 months during 2006 and 2007, until she was honorably discharged due to "pregnancy or childbirth." The Director further observed that the Applicant helps raise his wife's daughter from a previous relationship and care for his wife's grandmother, who lives with them. We acknowledge that the Applicant is the beneficiary of a granted Form I-130, Petition for Alien Relative, filed by the Applicant's spouse, recognizing their marital relationship.

On appeal, the Applicant asserts that decisions in the Fifth Circuit, such as *Ghassan*, 972 F.2d 631, and similar decisions in other circuits "are not binding in this instant case because the Applicant and the Philadelphia Field Office are located in the Third Circuit." The Applicant further asserts that "the Third Circuit has not issued any similar precedential decisions." However, the Applicant does not identify any Third Circuit precedent to the contrary, and the Board of Immigration Appeals has stated that "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, with knowledge that the alien might be deported." *In re Mendez-Moralez*, 21 I&N Dec. 296, 302 (BIA 1996). Accordingly, we find no error in the Director giving diminished weight to the Applicant's after-acquired equity of marrying his wife, who knew or should have known when she married him 16 years after he failed to depart the United States voluntarily, that he would be inadmissible upon his departure from the United States. Relatedly, other after-acquired equities, such as caring for his stepdaughter and grandmother-in-law, also bear diminished weight. *See id.*; *see also Garcia Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991); *see also Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980); *see also Ghassan*, 972 F.2d at 634-35.

The Applicant also asserts on appeal that the Director "erred in not finding that [the Applicant's spouse's military service] demonstrates extreme hardship to a qualifying relative." Specifically, the Applicant cites the U.S. Citizenship and Immigration Services (USCIS) Policy Manual, stating, "Military service by a qualifying relative often results in hardships from denial of the applicant's admission that rise above the common consequences of denying admission." 9 *USCIS Policy Manual* B.5(E)(3), https://www.uscis.gov/policymanual. The Applicant mischaracterizes that statement from the USCIS Policy Manual. That statement is specifically in the context of "a qualifying relative [who] is an Active Duty member of any branch of the U.S. armed forces, or is an individual in the Selected Reserve or Ready Reserve." *Id.* Therefore, the Director appropriately considered the Applicant's spouse's prior 10-month military service as an equity, but not a "'particularly significant factor' in any extreme hardship analysis."

The Applicant next asserts on appeal that the Director erred by generally "suggest[ing] that [the Applicant] may have procured his entry and asylum claim through fraud or misrepresentation" and that the U.S. Department of State would determine whether the Applicant would be inadmissible under a related ground. However, the Applicant does not identify specific language in the Director's decision that purports to make a finding of inadmissibility based on fraud or misrepresentation. Therefore, the Applicant has not established that the Director erred as asserted.

The Applicant also asserts on appeal that the Director erred by disregarding factors such as current country conditions in India, of which the Applicant is a native and citizen. Specifically, the Applicant

asserts that he "has not lived in India since 1997 and does not know anyone there who could help him." The decision does not support the Applicant's assertions. The Director's decision specifically addressed the potential hardships of the Applicant's return to India, acknowledging in relevant part, "You stated that you have not resided in India since 1997 and that you do not know anyone there who will help you upon your return." The Director further addressed aspects of potential hardship, such as the Applicant's family' inability to speak Punjabi or Hindu, emotional and financial hardship resulting from separation, and related factors.

The Applicant further asserts on appeal that the Director's timely processing of the Form I-212 within 21 days after the filing date was "both hasty and unwarranted." However, the Applicant has not identified how the processing time of the benefit request specifically relates to any error of law or fact in the Director's decision.

In summation, given the totality of negative factors in this case, in particular the willful disregard for an Immigration Judge's voluntary departure order, and given that the after-acquired equities bear diminished weight as discussed above, the negative factors in this case outweigh the after-acquired equities. *See Matter of Lee,* 17 I&N Dec. at 278-79; *see also Matter of Tin,* 14 I&N Dec. 371.

III. CONCLUSION

The Applicant has the burden of proof in seeking permission to reapply for admission. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Specifically, the negative factors in this case outweigh the after-acquired equities. *See Matter of Lee,* 17 I&N Dec. at 278-79; *see also Matter of Tin,* 14 I&N Dec. 371.

ORDER: The appeal is dismissed.