U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20268231

Date: MAY 24, 2022

Appeal of Providence, Rhode Island 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 she will be inadmissible upon departing from the United States for having been previously ordered removed. The Director of the Providence, Rhode Island Field Office denied the application, incorporating by reference the denial decision issued on January 11, 2021, for the Applicant's previous Form I-212, in which the Director concluded that the unfavorable factors in the Applicant's case outweigh the favorable factors.[1] The matter is now before us on appeal. On appeal, the Applicant submits a brief and states that the Director failed to consider the totality of the circumstances in weighing the positive and the negative factors.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Any noncitizen who has been ordered removed as an "arriving alien" under section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1) and seeks admission within five years of the date of his or her departure or removal is inadmissible. Section 212(a)(9)(A)(i) of the Act.

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) of the Act 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.

[1] The Applicant filed a Form I-212 in November 2020 (first Form I-212), which the Director denied on January 11, 2021. Subsequently, the Applicant filed another Form I-212 in April 2021 (second Form I-212), which is the subject of this appeal. The Director noted that with the second Form I-212, the Applicant did not submit any new evidence that differ from the first Form I-212 filing and incorporated by reference the reasoning contained in the first Form I-212 denial. The Director mailed the first Form I-212 denial along with the decision for the second Form I-212. Therefore, the Director provided sufficient notice of the grounds for denying the second Form I-212.

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).

II. ANALYSIS

The record reflects that the Applicant, a national and citizen of Guatemala, entered the United States without inspection and admission or parole in [redacted] 2012 and was apprehended by immigration agents thereafter.[2] She was found inadmissible and ordered removed pursuant to section 235(b)(1) of the Act. Subsequently, the Applicant was released from custody under an order of supervision and instructed to report to the Immigration and Customs Enforcement (ICE) office in Burlington, Massachusetts. However, the Applicant did not comply with the terms of her release under the order of supervision and has not reported to ICE as instructed since her release. In [redacted] 2017, ICE revoked the Applicant's release and transferred her file to ICE fugitive operations. In 2018, the Applicant married a U.S. citizen who subsequently filed an immigrant visa petition on her behalf, which was approved in October 2019.

Here, the Applicant may seek conditional approval of the Form I-212 under 8 C.F.R. § 212.2(j) before leaving the United States as her departure will trigger inadmissibility under section 212(a)(9)(A)(i) of the Act due to her prior removal order.[3] She does not contest that she will be inadmissible under section 212(a)(9)(A)(i) of the Act upon departure for having been previously ordered removed.[4]

In support of the instant Form I-212, the Applicant submitted a statement explaining how her departure would negatively impact her family. She also submitted information about conditions in Guatemala and statements from her friends attesting to her good character. The Director acknowledged that there were favorable considerations in the Applicant's case, including her family ties in the United States, the hardship to her spouse and children, the letters written by her friends on her behalf, and inferior economic and safety conditions in Guatemala. The Director noted that much of her positive equities were acquired after her deportation order and therefore carried less weight in the discretionary consideration. The Director also noted that the Applicant submitted insufficient evidence to substantiate her claims of hardship and determined that the positive factors in her case were insufficient to overcome the negative impact of the Applicant's longtime unlawful residence in the United States, her continued disregard of the U.S. immigration laws, and her failure to pay taxes.

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[2] The record indicates that the Applicant provided a false name to the immigration agents at the time of her encounter.

[3] The approval of her application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if she fails to depart.

[4] In the appeal brief, the Applicant cites to section 212(a)(9)(C)(i) of the Act, but does not elaborate on the relevance of this section of the Act to her case.

On appeal, the Applicant asserts that the Director did not consider the totality of the discretionary factors. She also asserts that she is not required to submit evidence supporting her hardship claims and by requiring such evidence, the Director is evaluating the Form I-212 more like the Form I-601A, Application for Provisional Unlawful Presence Waiver, which requires showing of extreme and unusual hardship to a qualifying relative. The Applicant further states that considering her positive equities as "after-acquired" disadvantages her spouse and children. On appeal, the Applicant admits working without authorization, but states that she did so to support her spouse and children. Lastly, she states that she is not "a bad person" and claims that she has been wrongly judged in her application.

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

The negative factors in the Applicant's case include her unlawful entry into the United States and unlawful presence; providing false identity upon encountering immigration official after her unlawful entry;[5] noncompliance with the terms of the order of release; unauthorized employment; and failure to pay U.S. taxes.

The positive factors include the Applicant's longtime residence and family ties in the United States; apparent lack of criminal history; and difficult conditions in Guatemala.

As an initial matter, while there is no dispute that the Applicant's family in the United States will be negatively affected if she must remain abroad for the entire inadmissibility period, any hardships to the Applicant's spouse and U.S. citizen children have diminished weight in the discretionary analysis because her marriage occurred in 2018 after she was ordered removed in 2012. 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).

Next, we agree with the Director that the Applicant did not submit sufficient evidence and explanation to support her claim of hardship to her family and for us to understand the nature of the hardship she asserts her family might experience. For example, in her statement, the Applicant claimed that her spouse and U.S. citizen children depend on her "daily physical and emotional" support. However, the Applicant did not elaborate on her spouse's and the children's "physical and emotional" needs and the type of assistance she provides. With regards to financial hardship, the Applicant claims that she worked without authorization to support her family, but provides no further details regarding the family's total income, the percentage of the income she contributes, and the household expenses. The record further remains unclear regarding whether the Applicant has paid income taxes as required by law. As stated above, on appeal, the Applicant asserts that she is not required to submit supporting evidence. However, we note again that the Applicant has the burden to establish eligibility by a preponderance of evidence.[6] Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. at 375. Here,

[5] Misrepresenting a material fact would render a noncitizen inadmissible under section 212(a)(6)(C)(i) of the Act.

[6] The instructions for Form I-212 encourage applicants to submit as much evidence as possible to explain why they believe

the record lacks sufficient detail and evidence for us to understand the nature of the hardship the Applicant's family might experience and therefore, she has not shown that the claimed hardships to herself, her spouse, and her children outweigh the negative factors in her case, or that there are additional circumstances mitigating her immigration violations.

After considering the record in its entirety, we do not find that the Applicant's arguments on appeal overcome the reasons for the Director's denial. She has also not submitted new or updated evidence supporting a favorable exercise of discretion related to her family responsibilities, the need for her services in the United States, or claims of hardship to herself or others in the event her application is denied.

We acknowledge evidence of other favorable factors in the Applicant's case, including letters attesting to her good character and information about conditions in Guatemala. This evidence, however, is insufficient to overcome the adverse impact of the Applicant's unlawful entry, non-compliance with the terms of the order of supervision, unlawful presence in the United States since 2012, material misrepresentation of her identity to immigration officials after apprehension which subjects her to additional inadmissibility grounds, unauthorized employment, the lack of evidence whether she has paid taxes, and the lack of any expression of remorse for her immigration violations.

Consequently, the Applicant has not demonstrated that the positive factors in her case outweigh the negative factors. A favorable exercise of discretion is therefore not warranted, and the Applicant's request for permission to reapply for admission to the United States remains denied.

ORDER: The appeal is dismissed.

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their application should be approved. The instructions list affidavits from applicants and others among suggested evidence, but notes that unsupported assertions in an affidavit by applicants or others are not sufficient to demonstrate why their application should be approved as a matter of discretion. The instructions further state that all claims made in affidavits should be supported by evidence or the applicants should explain in detail why they cannot obtain such evidence. The other suggested evidence includes, but not limited to, medical reports, employment records, evidence of hardship, evidence of family ties in the United States, and documentation related to the impact of family separation. See Instructions for Form I-212 available at https://www.uscis.gov/sites/default/files/document/forms/i-212instr.pdf.