U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 16429258

Date: MAY 25, 2022

Appeal of Los Angeles, California 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). He was previously ordered removed and will become inadmissible upon departing the United States to apply for an immigrant visa. 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 Los Angeles, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding the Applicant did not establish that a favorable exercise of discretion was warranted. On appeal, the Applicant submits a brief and contends that the Director did not appropriately weigh the favorable and unfavorable factors presented in his application.

In these proceedings, the applicant bears the burden of proof to establish eligibility for the requested benefit 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

Section 212(a)(9)(A)(ii) of the Act 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 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).

## II. ANALYSIS

The Applicant, a native and citizen of Armenia, 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] He does not contest that he will become inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure for having been previously ordered removed.[2] 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.

We have reviewed the entire record, including the brief submitted on appeal, and for the reasons explained below conclude that the Applicant has not established that a favorable exercise of discretion is warranted.

The Applicant was ordered removed from the United States in [redacted] 2014. Over two years later, in [redacted] 2016, the Applicant married his U.S. citizen spouse, who then filed an immigrant visa petition on his behalf. In support of his Form I-212, the Applicant submitted evidence including his sworn affidavit, his spouse's affidavit, civil documents, family photos, individual and joint income tax returns for the years 2010 through 2017, a 2018 Armenian human rights report, copies of household bills demonstrating shared expenses with his spouse, his spouse's medical records, and nine affidavits from friends who attest to his good character and the bona fide nature of the Applicant's marriage.

In his affidavit, the Applicant states that he met his spouse in 2004 and that they lived together for ten years before marrying in 2016. He explains that they both work full-time and share financial responsibilities, notes that they rely on each other for emotional support, and emphasizes that his spouse has medical issues that require rehabilitation and follow-up care, including neck pain and radiculopathy and bilateral hand pain. The Applicant states that returning to Armenia will result in hardship, as both he and his spouse consider the United States to be their home, his spouse may not be able to receive the same level of medical care as she does in the United States, and they are both at an age which may make it difficult to secure new employment. The Applicant further states that it would be difficult for his spouse to remain in the United States separated from him because she relies on him for financial and emotional support, and they cannot imagine living apart.

---

[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 the Applicant does not depart.

[2] The record reflects that the Applicant was admitted to the United States using a B1/B2 visitor visa in August 2002 and was authorized to remain in the United States for six months, until February 2003. An Immigration Judge ordered the Applicant removed from the United States on [redacted] 2014, after denying his application for asylum, withholding of removal and voluntary departure. The Board of Immigration Appeals (the Board) affirmed that decision but withdrew the Immigration Judge's determination that the asylum application be deemed frivolous under section 208(d)(6) of the Act. The Applicant has not departed since his initial admission in 2002 and continues to reside in the United States.

In her affidavit, the Applicant's spouse describes their relationship as one based on love and respect, emphasizes that they both have full-time jobs, and expresses her desire for the Applicant to remain in the United States with her. She does not address any specific hardships she or the Applicant would experience if the Applicant were unable to remain in the country.

The medical records submitted for the Applicant's spouse include various reports of test results dated between 2016 and 2018. One test, prompted by a complaint of neck pain with bilateral hand pain, resulted in a diagnosis of "mild bilateral chronic C5-C6 cervical radiculopathy" for which she was advised to continue therapeutic and rehabilitative care. Other documents indicate that the Applicant's spouse had an MRI of the brain, an ultrasound of the thyroid with a follow up appointment with an endocrinologist ordered, and an ECG that resulted in a short-term prescription for Xanax to treat anxiety. The record does not contain a statement from a physician indicating the spouse's condition, treatment plan, prognosis or whether she has any medical condition or physical needs for which she requires assistance. As noted, the affidavit from the Applicant's spouse indicates that she works full time and does not mention that she has any medical or health concerns that would be exacerbated by a separation from or relocation with her spouse. Although the applicant mentions that his spouse would not receive the same level of medical care if she were to relocate to Armenia with him, the record does not sufficiently disclose what type of treatment or care she requires or include evidence that discusses the availability of such care in Armenia.

Although the Applicant states that his spouse relies on her for financial support, he also states that they share household expenses and the submitted joint income tax returns from 2016 and 2017 reflect that she reported higher earnings than the Applicant in those years. The record does not establish that the Applicant's spouse would not be able to support herself if she remained in the United States without the Applicant. The Applicant indicates that he and his spouse would likely not have employment opportunities in Armenia due to their respective ages (46 and 54 at the time of filing). The submitted U.S. Department of State country report on human rights practices in Armenia indicates that a constitutional prohibition on discrimination in the workplace is not effectively implemented by law, and that many employers reportedly practice age and gender discrimination that may particularly impact women over age 40.

In denying the Form I-212, the Director acknowledged as positive factors the Applicant's marriage to a U.S. citizen, his approved immigrant petition, a history of steady employment, a lack of criminal history, his submission of several affidavits from friends attesting to his good character, and the hardships that he and his spouse may experience in the event of his removal. The Director acknowledged the strong bond the Applicant shares with his spouse, but noted that he has immediate family, including two children, who reside outside the United States, which may mitigate his hardship if he must relocate. With respect to the Applicant's claim that his spouse has medical concerns that could not be treated in Armenia, the Director found there was insufficient recent evidence of any ongoing treatment she is receiving or evidence supporting a claim that such treatment would be unavailable if she chooses to relocate back to her home country with the Applicant.

The Director also acknowledged the Applicant's claims of financial hardship based on limited employment opportunities in Armenia, specifically due to age discrimination. The Director emphasized that the Applicant has over 20 years of experience as a professional electrician, including years of experience in Armenia, and had not established that he would not be able to find work in the

event of his removal. Accordingly, the Director determined that the general hardships to be faced by the Applicant and his spouse would not be weighed heavily. We agree with the Director that while the evidence establishes a strong emotional bond between the Applicant and his spouse, the claims of financial and medical hardship are not similarly well-supported in the record.

On appeal, counsel asserts that the Applicant's spouse continues to see her physicians for checkups and treatments as necessary, but the Applicant has not provided any additional evidence related to her medical condition and treatments. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence. Counsel also reiterates that the Applicant, at 48 years old, will find it extremely difficult to find work in Armenia due to his age, despite his prior experience as an electrician. Counsel highlights a portion of the previously submitted 2018 Human Rights Report for Armenia, but the Director's decision reflects that this evidence was already considered and deemed to be insufficient to support the Applicant's claim that his age would place him at a significant disadvantage.

Although not addressed by the Director, we further note that generally, favorable factors that came into existence after a noncitizen has been ordered removed from the United States ("after-acquired equities") 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). Although the Applicant and his spouse indicate that they have been living together since 2006, they did not get married until 2016, two years after the Applicant was ordered removed from the United States. As a result, the Applicant's family ties to a U.S. citizen, and the associated hardships that may result if the Applicant is removed from the country, are given diminished weight as favorable factors in USCIS' discretionary analysis.

The Director determined that the negative factors present in this case include: the Applicant's disregard for U.S. immigration laws by overstaying his admission as a B-2 visitor; his failure to comply with his removal order; his engagement in unauthorized employment; his lengthy unlawful stay in the United States since February 2003, and the adverse credibility finding made by the immigration judge that denied his asylum application, which the Director noted was upheld by the Board of Immigration Appeals and would be weighed heavily against him.

On appeal, the Applicant emphasizes that he has been trying to legalize his status in the United States, that he has no criminal history, and that his friends have attested to his good moral character, but he does not contest the negative factors addressed by the Director or the weight given to them.

After considering the record in its entirety, we do not find the Applicant's arguments on appeal overcome the reasons for the Director's denial. As discussed above, the Director appropriately identified and weighed the positive and negative factors presented by the record. On appeal, the Applicant has not submitted new or updated evidence regarding his character, family responsibilities, hardship involved to himself or his spouse, or other factors supporting a favorable exercise of discretion. Although we are sympathetic to the claims of hardship to the Applicant and his spouse if

his application is denied, the positive factors, which include after-acquired equities, do not outweigh the negative factors in evaluating whether the Applicant warrants a favorable exercise of discretion. Accordingly, the application will remain denied.

**ORDER:** The appeal is dismissed.