U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22686675

Date: OCT. 12, 2022

Appeal of Newark, New Jersey 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. *See* section 212(a)(9)(A)(ii) of the Act. 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 Newark, New Jersey Field Office denied the application, concluding that the Applicant did not establish that a favorable exercise of discretion was warranted in her case. On appeal, the Applicant submit a legal brief to argue that the Director erred.

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) of the Act, 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 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'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).

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).

Any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the noncitizen's inadmissibility or deportability and who seeks admission to the United States within five years of such noncitizen's subsequent departure or removal is inadmissible. Section 212(a)(6)(B) of the Act.

II. ANALYSIS

The Applicant is currently in the United States and seeks permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before departing the United States. The record indicates that the Applicant will become inadmissible upon departing the United States under section 212(a)(9)(A)(ii) of the Act.

On appeal, the Applicant contends that the Director erred by failing to appropriately consider and weigh the submitted evidence. We do not agree.

The record reflects that in May 2005, the Applicant attempted to enter the United States without being inspected, admitted, or paroled. On [redacted] 2005, the Applicant was apprehended in [redacted] Texas, and was placed in removal proceedings. She was initially detained, but due to a lack of space in the detention center, she was released on her own recognizance. She was scheduled to appear before the immigration court on [redacted] 2005, but she did not attend her removal proceedings. As a result, she was ordered removed *in absentia* on [redacted] 2005. The Applicant never departed the United States and has remained here, without status, since her May 2005 entry without admission or parole.

The Director denied the application for permission to reapply for admission, finding that the Applicant had not demonstrated that she merited a favorable exercise of discretion. The Director weighed the unfavorable factors including her *in absentia* removal order, and her inadmissibility under section 212(a)(6)(B) of the Act for failing to appear for her removal hearing against her family ties, community ties, lack of criminal record, and hardships her spouse and U.S. born daughter would face if she were to be removed, and found that the favorable factors did not outweigh the unfavorable factors.

The Applicant's family ties include her U.S. citizen husband, her school-aged U.S.-born daughter, and her husband's U.S.-based family (including his parents, siblings, and three daughters). Her community ties include significant business and personal ties related to her husband's supermarket business, and her involvement in her daughter's education and schooling, particularly because her

daughter has been identified as requiring special education services due to reading difficulties. We acknowledge that several letter writers voiced their concerns about how the Applicant's forced departure from the U.S. would be detrimental to their family. In particular, we carefully considered the Applicant's spouse testimony explaining why his wife's application should be granted in the exercise of discretion. He writes that he would not be able to accompany his wife to live with her in Honduras because the country is unsafe, and he has worked his whole adult life to own a business and his home. He also explains that he is close to his adult daughters and would not want to be far from them or his parents and siblings, who all reside in the United States. He describes the Applicant in glowing terms as a hard worker, a caring stepmother to his daughters, a great partner to him, and a good mother, and person. He describes the high value he places on family togetherness, and requests that her application for permission to reapply for admission be approved so that she can remain with the family in the United States.

We also acknowledge the Applicant's affidavit reiterating that her removal order resulted from her not comprehending the right procedure when she entered the United States, and that she did not understand she needed to go to court with an attorney. We note, however that at the time of her entry, she was an adult (approximately 22 years old). Moreover, government records indicate that she was provided with a list of free and low-cost legal service providers, and given instructions in the Spanish language regarding her obligations to attend court hearings, and the consequences of not attending her hearings, and of failing to inform the government of any change of address. The Applicant does not appear to take personal responsibility for her actions, and contrary to the evidence in the file, she claims she did not know what she was supposed to do.

We further acknowledge the evidence regarding country conditions in the Applicant's home country of Honduras, which shows crime is an issue. We also acknowledge the evidence that the Applicant is a good mother who shows interest in her daughter's education and her family's well-being. In addition, we have carefully considered her daughter's special educational needs, and acknowledge that the Applicant appears to attend meetings in her school to address her educational needs. We further acknowledge the psychological evaluation provided which concluded that the Applicant's spouse will experience "severe, extreme, continuous, and enduring hardships" if he is forced to reside apart from her. We reviewed the Applicant's evidence relating to her daughter's emotional well-being if she loses her mother. Finally, we acknowledge the Applicant's spouse owns a business, a home, and other assets that he is unable to abandon if she is forced to return to Honduras.

In denying the application, the Director acknowledged the Applicant's family ties, good moral character, and other hardships her family would experience upon her removal to Honduras. However, the Director determined that these positive factors were insufficient to overcome the unfavorable factors, specifically the Applicant's entry into the United States without inspection, non-compliance with the removal order, unlawful residence and work in the United States, and inadmissibility under section 212(a)(6)(B) of the Act, which results in a 5-year bar upon departing the United States that cannot be waived.

On appeal, the Applicant argues that the Director erred because there is no legal precedent for giving the Applicant's after-acquired equities less weight. We do not agree. In general, favorable factors ("equities") acquired after an order of deportation, exclusion, or removal has been entered may be given less weight in assessing favorable factors in the exercise of discretion. *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.

The Applicant appears to have entered the United States alone, however the record reflects that she has family ties in her home country, specifically a son and her parents, who did not enter the United States with her. The Applicant's family ties in the United States, includes her husband (and his family), and her daughter, both of whom are after acquired family ties. She married her United States citizen spouse thirteen years after her removal order was issued and had her U.S. born daughter three years after her entry. As such, these are after-acquired equities that are not accorded the same weight as equities existing prior to entry of her removal order. Therefore, the evidence suggests that her pre-existing family ties in Honduras outweigh or balance her after-acquired family ties in the United States.

We have considered the Applicant's claims related to business ties in the United States and acknowledge that these ties are closely linked to her relationship to her husband since all evidence of business and property assets are in his name only. We understand that the Applicant works to assist her husband in carrying out his business affairs, however the fact that she does not hold title to these assets reduces the overall weight accorded to these assets because they are more closely linked to her husband than her. As we previously noted, her husband constitutes an after-acquired family tie, and as such, her relationship to him is not outweighed by other pre-existing familial relationships she maintains in Honduras. We understand that the Applicant may have submitted the evidence of her husband's assets to show that he is unable and unwilling to go to Honduras with her because he has significant ties to his family and business and home. We accept that to be true. However, the assets themselves do not appear to require the Applicant's presence in the United States, thus they do not tilt our analysis towards granting her application for permission to reapply admission.

We have considered the fact that the Applicant's daughter receives special education services for her reading difficulty. The evidence indicates her daughter is receiving adequate educational services in the United States. We understand that the Applicant is involved in her daughter's schooling, however this child also has her father in the United States, and it appears he and the Applicant share custody. Insufficient evidence was provided to understand what role he plays in the care and custody of the Applicant's daughter or why he would be incapable of ensuring that their daughter would continue receiving the special education services she requires. Although the Applicant claims he is not reliable, we are not given any specific information that would enable us to understand what that means, or why he would be incapable of caring for the Applicant's U.S. born daughter. In sum, while we are sympathetic to the Applicant's daughter's special educational needs, she appears to have a caretaker that is legally responsible for her in the United States, in the event the Applicant is removed to Honduras. The record as it currently stands contains no explanation as to why her education would be negatively disrupted if her father were to assume responsibility for it.

Finally, we point out that the Director noted that even if USCIS waives the Applicant's inadmissibility under section 212(a)(9)(A)(ii) of the Act, upon departing the United States, she would be inadmissible for five years under section 212(a)(6)(B) of the Act for failing to attend her removal proceedings without reasonable cause, and there is no waiver for section 212(a)(6)(B) inadmissibility. Although there is no statutory definition of what the term "reasonable cause" means as it is used in section

212(a)(6)(B) of the Act, guiding USCIS policy provides that "it is something not within the reasonable control of the alien."[1]

As stated above, the record reflects that the Applicant was ordered removed *in absentia* by an immigration judge because she failed to appear for her immigration court hearing. The Applicant submits that her reasonable cause for failing to appear was her ignorance about the proper procedures, which was due in part to her not speaking English. However, as we stated earlier, this explanation is contradicted by our records indicating that she was provided with Spanish-language information and resources so that she would understand the consequences of her failure to appear.[2] Furthermore, she was an adult at the time of her entry, and as such, she has not provided a reasonable explanation or cause, under the circumstances, for her failure to contact anyone from the list of legal service providers or why she failed to provide the immigration court with her updated change of address. The evidence suggests that the Applicant's departure will trigger inadmissibility under section 212(a)(6)(B) of the Act for which no waiver is available. This is relevant to determining whether permission to reapply for admission should be granted as a matter of discretion, as no purpose would be served in granting the application under these circumstances. *See Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964).

Accordingly, the Applicant's application for permission to reapply for admission will remain denied as a matter of discretion because she has not demonstrated the balance of equities favor a grant. And separately, no purpose may be served in granting her application because she will likely remain inadmissible for five years under section 212(a)(6)(B) of the Act for failing to appear for her removal proceedings without reasonable cause.

III. CONCLUSION

The Director did not err in denying the Applicant's Form I-212, application for permission to reapply for admission, as a matter of discretion. As such, the Form I-212 application for permission to reapply for admission remains denied as a matter of discretion.

ORDER: The appeal is dismissed.

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[1] Memorandum from Lori Scialabba, Associate Director for Refugee, Asylum & International Operations Directorate, et al., USCIS, HQ 70/21.1 AD07-18, Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators. Revisions to the Adjudicator's Field Manual (AFM) to Include a New Chapter 40.6 (AFM Update AD07-18)(Mar. 3, 2009).

[2] Specifically, the Applicant's Form I-213, Record of Deportable/Inadmissible Alien, states "Subject was advised in the Spanish language of the EOIR-33 requirements to provide a valid address or change of address and telephone number within 5 days of acquiring or moving so that notification of hearing or other correspondence be mailed to the address provided by her. Failure to comply with his requirement or report for her upcoming immigration hearing, which will be set at a later date, may result in her deportation in absentia. The subject stated that she understood everything that was explained to her."