U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22902914

Date: OCT. 28, 2022

Motion on Administrative Appeals 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)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii). He is inadmissible because he re-entered the United States without being admitted after having been ordered removed from the United States.

The Director of the Nebraska Service Center denied the application. The Director concluded that the Applicant is statutorily ineligible for the benefit sought, because less than ten years have elapsed since the date of the Applicant's last departure from the United States in 2018.[1] The Applicant appealed the denial, and we dismissed the appeal in June 2020. The Applicant filed a combined motion to reopen and reconsider our decision, and we dismissed the combined motion in January 2022.

The matter is now before us on a motion to reconsider. On motion, the Applicant asserts that he provided false information at the time of his apprehension in 2009, which resulted in the expedited removal that formed a key basis for his subsequent inadmissibility.

Upon review, we will dismiss the motion.

I. LAW

The Applicant is seeking permission to reapply for admission to the United States. He has been found inadmissible for entering the United States without being admitted after having been ordered removed from the United States.

Section 212(a)(9)(C)(i) of the Act provides that an alien who "has been ordered removed . . . and who enters or attempts to reenter the United States without being admitted is inadmissible." Under section 212(a)(9)(C)(ii) of the Act, there is an exception for any "alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's 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 alien's reapplying for admission."

[1] A second ground of denial, concerning unlawful presence, was deemed erroneous and withdrawn at an earlier stage in this proceeding.

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. MOTION REQUIREMENTS

A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Applicant has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, an applicant must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

III. ANALYSIS

In this case, the Applicant concedes that he attempted to enter the United States in [redacted] 2009 and was detained by border patrol officers. He was removed via expedited removal in [redacted] 2009. He also concedes that he unlawfully re-entered the United States without admission in 2011, and departed the United States in 2018.

The Applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act because he was ordered removed under section 235(b)(1) of the Act and then reentered the United States without being admitted, thus subjecting him to a 10-year bar under section 212(a)(9)(C)(ii). A foreign national who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for permission to reapply for admission until ten years after the date of their last departure from the United States. In this case, the Applicant's last departure was in 2018, less than 10 years ago, and he is therefore currently statutorily ineligible to apply for permission to reapply for admission.

The Applicant contends that the circumstances of his expedited removal warrant special consideration, because he states that he was denied due process. When the Applicant filed the Form I-212 application, he stated that, at the time of his detention, "I was only 17 years old. The immigration

office took down the wrong information and made it seem like I was 18 at the time of deportation." The Applicant's birth certificate and other documents reproduced in the record establish that he was born in 1992, not 1991 as indicated at the time of his detention. There is no indication that these documents were in the Applicant's possession at the time of his apprehension, or that he presented these documents for inspection.

The Director denied the application, finding the Applicant to be statutorily ineligible for the relief sought. On appeal from that decision, the Applicant contended that his "expedited removal order is defective because it was issued in violation of [his] due process rights" because he was a minor at the time of the encounter. He claimed on appeal that, during the removal process, "he was never allowed to make any statements," "was never allowed to make a sworn statement on Form I-867 AB," and "was never informed in a language he understands of the charges of removability or the nature of the proceedings."

In our June 2020 decision dismissing the appeal, we stated:

> Contrary to his assertions that his expedited removal order was invalid and he was not provided an interpreter or allowed to provide a sworn statement, the record contains a Form I-867A, Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act, written in Spanish and English, that was signed by the Applicant the day he was detained, and in which he conceded that he illegally entered the United States. . . . The Form I-867A specifies that the Applicant's interview was conducted in the Spanish language. The record also contains a Form I-296, Notice to Alien Ordered Removed/Departure Verification, that was signed by the Applicant on [redacted] 2009, verifying his removal on that date, and notifying him of his inadmissibility and prohibition from entering, attempting to enter, or being in the United States for five years.

Following dismissal of the appeal, the Applicant filed a combined motion to reopen and reconsider, alleging that he "was never given an opportunity to speak; he was not given an interpreter in the Spanish language;" and he "was told to sign" a document he did not understand.

In our January 2022 decision dismissing the motion, we reiterated that "the record contains a Form I-867A . . . , written in Spanish and English," and that the form "specifies that the Applicant's interview was conducted in the Spanish language." We noted that, because the Applicant had claimed a date of birth in 1991 instead of 1992, officers of U.S. Customs and Border Protection (CBP) would not have had any reason to treat him as a minor.

Now, in his second motion, the Applicant acknowledges that he provided a false birth date to the CBP officer who apprehended him. The Applicant states that he believed, at the time, that if he admitted he was a minor, then he would be detained, whereas if he claimed he was 18, he would be taken across the border to Mexico and "freed again quickly to recross." The Applicant also acknowledges, "I did know that the paper I was signed [*sic*] was a deportation because the officer explained it to me, if I am not mistaken, he spoke Spanish. I accept my guilt." This statement contradicts his earlier claims that he was compelled to sign a document he did not understand, and was not allowed to speak. By signing

Form I-212, the Applicant certified, under penalty of perjury, that all the information in the application was complete, true, and correct.

The motion under consideration is not a *de novo* readjudication of the Form I-212 application. The only issue properly before us is whether our prior decision from January 2022 contained errors of law or policy. The Applicant identifies no such errors.

The Applicant repeats the contention that he was denied due process because the officers did not follow the procedures relating to unaccompanied minors. But the Applicant now admits that he knowingly provided a false date of birth to CBP, specifically to convey the impression that he was an adult. The Applicant's expedited removal resulted from his admittedly false statements at the time of his apprehension, rather than from any intentional violation of his due process rights. He does not claim that, at the time of his apprehension, he possessed or presented any documentation that would have revealed his true age. The Applicant's revised narrative of the events in [redacted] 2009 does not establish incorrect application of law or policy in our July 2022 decision.[2]

The Applicant has not overcome the conclusion that he is currently statutorily ineligible for the relief he seeks in this proceeding.

ORDER: The motion to reconsider is dismissed.

[2] The Administrative Appeals Office (AAO) does not have the authority to overrule or rescind an order of expedited removal; such orders do not originate from within U.S. Citizenship and Immigration Services, where the AAO's jurisdiction lies.