U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27157229

Date: AUG. 9, 2023

Appeal of Mount Laurel, New Jersey Field Office Decision

Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal

The Applicant seeks advance 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 become inadmissible upon departing from the United States for having been previously ordered removed.

The Director of the Mount Laurel, New Jersey Field Office denied the application, concluding that the Applicant did not establish, as required, that a grant of permission to reapply for admission was warranted in the exercise of discretion. The matter is now before us on appeal.

On appeal, the Applicant submits supplemental evidence and asserts that it establishes additional hardship to his spouse and stepdaughter if the Form I-212 is denied.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *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 part, that a noncitizen, other than an "arriving alien," who has been ordered removed under section 240 of the Act, 8 U.S.C. § 1229a, or any other provision of law, or who 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 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.

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).

Equities that came into existence after a noncitizen has been ordered removed from the United States ("after-acquired equities"), including family ties, have diminished weight for purposes of assessing favorable factors in the exercise of discretion. *See Garcia-Lopes v. INS*, 923 F.2d 72, 74 (7th Cir. 1991) (finding that 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) (explaining that 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).

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 from the United States. He does not contest that he has an outstanding order of removal and will be inadmissible under section 212(a)(9)(A)(ii) of the Act once he departs.[1] The only issue on appeal is whether the Applicant has established that approval of his request for permission to reapply for admission is warranted as a matter of discretion. Upon review of the entire record, as supplemented on appeal, we conclude that he has not.

The record reflects that the Applicant initially entered the United States in 1993 and applied for asylum. His testimony was found to be not credible; he was determined ineligible for asylum and placed in removal proceedings. An Immigration Judge granted the Applicant's request for voluntary departure until May 22, 1998, with an alternate order of removal to India if he did not depart by that date. The Applicant did not depart and did not report for removal in [redacted] 1998, as requested. In 2012 his mother immigrated to the United Sates based on an approved immigrant visa petition his U.S. citizen brother filed on her behalf. The Applicant married a U.S. citizen in 2017, and requested reopening of his removal proceedings on that basis, but the Immigration Judge denied the motion to reopen. In 2018, U.S. Immigration and Customs Enforcement (ICE) placed the Applicant under an order of supervision, and two years later he filed the instant Form I-212 requesting permission to reapply for admission to the United States.

As stated, the Director denied the application as a matter of discretion, concluding that the favorable factors in the case did not outweigh the unfavorable ones. The Director identified the favorable factors

[1] The approval of the Applicant's Form I-212 under these circumstances is conditioned upon his departure from the United States and will have no effect if he does not depart. We note that although the Applicant indicated on the Form I-212 that he is seeking permission to reapply for admission to become a lawful permanent resident, the record does not establish that he currently has an immigrant visa request pending abroad. And, as the Applicant also indicated on the Form I-212 that the information about the Department of State consular case number and/or the location of the U.S. Embassy or U.S. Consulate where he intended to apply for an immigrant visa was not applicable, it is not clear whether he intends to depart the United States.

as the Applicant's family ties in the United States, including his U.S. citizen spouse, two adult stepchildren, and his lawful permanent resident mother, as well as hardship to his family members, longtime residence in the United States, payment of taxes from 2016 through 2019, lack of arrests, letters attesting to his character, and adverse conditions in India. The Director found, however, that the weight of these favorable factors was diminished by the fact that the Applicant's residence in the country was unlawful with the exception of the four-year period while his asylum request was pending, and his employment unauthorized. The Director further determined that all positive equities in the case had limited value in the discretionary analysis because they were acquired long after the Applicant had been ordered removed in 1998.

On appeal, the Applicant states that in 2021 his adult stepdaughter, who resides in Georgia, was diagnosed with avascular necrosis, a disease that results from the temporary or permanent loss of blood supply to the bone. He explains that his stepdaughter will need approximately eight months to recover from surgery (which was scheduled in September 2021) and, as she will not be able to work during the recovery period, his presence in the United States as a caregiver and breadwinner will be necessary. He states that although ICE restrictions currently limit his ability to be physically present in Georgia on a long-term basis,[2] he financially supports his spouse and stepdaughter, and in his absence the burden on his spouse is going to be unmanageable. The Applicant's stepdaughter states in her letter that she will need a lot of care and help at home after the surgery, and that she would like the Applicant to live in the United States and be with his family.

We acknowledge the Applicant's statements, and recognize that his spouse and stepdaughter might experience financial difficulties if he departs from the United States and must remain abroad for the entire 10-year inadmissibility period. However, as explained in the Director's decision, because the Applicant's family ties were created 19 years after he had been ordered removed from the United States, the weight of any hardship to his spouse and stepchildren in the discretionary evaluation is limited. Furthermore, the record shows that the Applicant currently resides in New Jersey; as he does not explain how often he visits his spouse and stepdaughter in Georgia and he does not offer evidence of the claimed financial support he provides them, it is unclear if and how the Applicant's absence from the United States may affect his spouse's ability to assist her daughter after the surgery.

In conclusion, the record as supplemented on appeal remains inadequate to show that the positive factors considered in the aggregate outweigh the negative impact of the Applicant's longtime unlawful residence in the United States, adverse credibility finding in asylum proceedings, unauthorized employment, and noncompliance with the voluntary departure and removal orders.

Consequently, the Applicant has not demonstrated that he merits permission to reapply for admission as a matter of discretion and his Form I-212 remains denied.

ORDER: The appeal is dismissed.

[2] We note that under the terms of the order of supervision the Applicant must not travel outside New Jersey area for more than 48 hours without first notifying ICE and obtaining approval of such proposed travel; he must also notify ICE of any change of residence or employment within 48 hours prior to such change.