U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24120630

Date: FBE. 24, 2023

Appeal of U.S. Customs and Border Protection Decision

Form I-212, Application for Permission to Reapply for Admission

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). She has filed a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, seeking permission to reapply for admission under Section 212(a)(9)(A)(iii) of the Act.[1]

The Director of the U.S. Customs and Border Protection (CBP) Admissibility Review Office (Director) denied the Applicant's Form I-212 application, as a matter of discretion, concluding that "the favorable factors in [her] case [were] outweighed by the unfavorable factors, including the seriousness of the reasons that supported [her] removal from the United States, as well as the potential that [she] may violate the immigration laws if [she is] admitted to the United States." 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 foreign national, 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 the 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 (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. Foreign nationals 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

[1] Although the Applicant states that she has a job offer and is eligible for a Nonimmigrant NAFTA Professional (TN) visa, she was previously expeditiously removed in [redacted] 2020 under section 235(b)(1) of the Act for a separate ground of inadmissibility. She is thus inadmissible for 5 years from the date of her removal under section 212(a)(9)(A)(i) and needs permission to reapply for admission.

States or attempt to be admitted from foreign continuous territory, the Secretary of Homeland Security has consented to the foreign national's reapplying for admission.

Approval of a Form I-212 application 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 a Form 1-212 application 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).

II. ANALYSIS

The Applicant is a citizen of Canada who was born in Ghana. In [redacted] 2020, the Applicant applied for admission at [redacted] International Airport. She told U.S. Customs and Border Patrol (CBP) that she was applying for admission in order to transit to Canada. During an interview with CBP, the Applicant confirmed that she had overstayed during a prior admission and also worked without authorization. The Applicant was found inadmissible under section 212(a)(7)(A)(i)(I) as an immigrant without a valid entry document. CBP expeditiously removed the Applicant, issuing her a Form I-860, Notice and Order of Expedited Removal, and a Form I-296, Notice to Alien Ordered Removed/Departure Verification, indicating that the Applicant was prohibited from entering the United States for a period of five years from the date of her departure. The Applicant is therefore inadmissible under section 212(a)(9)(A)(i) of the Act for five years from the date of her removal, or until [redacted] 2025, and needs permission to reapply for admission. The Applicant also submitted the Form I-192, Application for Advance Permission to Enter as Nonimmigrant, to CBP seeking a waiver of her inadmissibility under section 212(a)(9)(B)(i)(I) of the Act for unlawful presence. The record indicates, and the Applicant does not dispute, that she was unlawfully present in the United States for more than 10 years. The Director denied the Form I-192 application in a separate decision, and an appeal is pending before the Board of Immigration Appeals.

In evaluating the Applicant's Form I-212 application, the Director determined that a favorable exercise of discretion was not warranted. The Director noted that the Applicant had been refused entry to the United States three times at other ports of entry immediately prior to the attempted entry resulting in her expedited removal in [redacted] 2020. The Director also indicated that the Applicant had accrued an aggregate of more than 10 years of unlawful presence, and her last overstay lasted from July 2017 until [redacted] 2020. The Director referred to the Applicant's statements that she "briefly" visited her children in the United States after returning to Canada in 2006, but concluded that she had misrepresented herself in attempt to conceal her unlawful presence from July 2005 to June 2009, July 2009 to an unknown date, June 2020 to June 2017, and July 2017 to [redacted] 2020. The Director identified the Applicant as having a history of repeated immigration violations, showing a pattern of misconduct and a disregard for law and order in the United States. The Director concluded that the Applicant's brief expression of remorse "appear[ed] limited to [her] personal consequences and [did] not sufficiently mitigate the serious adverse matters of record." The Director affirmed that she considered the Applicant's reasons for wishing to enter the United States, namely her job offer as a

registered nurse at [redacted] Hospital in Virginia.[2] Finally, the Director noted that there was insufficient evidence of hardship to the Applicant or her three children, or that her services were needed in the United States.

On appeal, the Applicant contends that the Director misapplied the precedent decisions upon which it relied. She argues that, unlike the applicant in *Matter of Tin*, she is a single mother of three minor U.S. children who will experience hardship if her application is denied. She states that she presented herself for inspection and admission each time she entered the United States and has no criminal history, and her services as a registered nurse are needed in the United States. She maintains that "these factors set [her] case apart from those of the applicant in *Matter of Tin*, the denial of whose application was affirmed by the BIA." Similarly, the Applicant argues that *Matter of Lee* emphasized that a record of immigration violations alone will not conclusively support a finding of a lack of good moral character, and the recency of removal can only be considered where there is a finding of "moral turpitude"— a factor missing in her case.

We acknowledge the Applicant's contentions on appeal. We note, however, that the Director did not conclude that the facts of *Matter of Lee* and *Matter of Tin* were analogous to those in her case. Rather, the Director referenced those cases because they describe the factors that can be considered in determining whether a favorable exercise of discretion is warranted. In this case, the Director focused on the basis for the Applicant's prior deportation; the recency of that deportation; her respect for law and order; evidence of her reformation; hardship to herself or others; and the need for her services in the United States. Applying those factors, the Director noted that the Applicant attended school and worked in the United States without authorization in violation of the terms of her nonimmigrant visa. Additionally, she repeatedly overstayed her admissions to the United States by many years, for which she is also inadmissible under section 212(a)(9)(B)(i) if the Act for unlawful presence. Furthermore, we agree with the Director that there is insufficient evidence of the hardship the Applicant or her children would face if she were not permitted to visit her family in the United States. The Applicant contends that she is a single mother of three minor children who will suffer hardship if her application remains denied. She further contends that her children currently live with her elderly mother, who is experiencing health issues. However, the Applicant did not submit any documentation detailing her mother's current health condition or establishing that she would be unable to continue providing financial and emotional support to the Applicant's children. There is also no indication that the Applicant's children could not remain in the United States and visit her in Canada to maintain strong familial ties. Consequently, we agree with the Director that the Applicant has not demonstrated that the positive factors in her case, considered both individually and in the aggregate, 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.

[2] The Applicant submitted several letters from the hospital confirming their offer of employment.