U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23950304

Date: JAN. 9, 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).

The U.S. Customs and Border Protection Admissibility Review Office (CBP ARO) denied the application, concluding that the record did not establish that a favorable exercise of discretion was warranted. On appeal, the Applicant submits additional evidence, and asserts that the Director erred by failing to consider the totality of positive factors in his case. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 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 (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 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 was removed from the United States in 2014 and resides in Canada with his U.S. citizen wife. He seeks permission to reapply for admission to enter the United States as a tourist in nonimmigrant status so he can spend approximately two weeks with relatives.

The record reflects that the Applicant, a national and citizen of Canada who was born in Mexico, entered the United States without inspection and admission or parole at an unknown date and place around 1998. The Applicant's criminal history began in 2002 and includes crimes involving significant drug and alcohol abuse, assault on a person, and violations of vehicle and public safety laws. In 2011, he was placed in removal proceedings. The proceedings were later terminated so he could pursue adjustment of status to permanent resident through his U.S. citizen wife. Our records do not reflect that he ever sought or obtained permanent resident status. Following a [redacted] 2014 conviction for selling a controlled substance, the Applicant was administratively removed from the United States to Canada as an aggravated felon. Section 101(a)(43)(B) of the Act, 8 U.S.C. §1101(a)(43)(B). The Applicant's most recent legal violation occurred in [redacted] 2018 when he failed to attend a court date in Canada. The Applicant has been residing in Canada since 2014.

In support of his application, the Applicant submitted a personal statement, along with statements from his U.S. citizen wife, family members, and community members who attest to his changed character. He also submitted sufficient evidence to establish his ownership of a log haul trucking business, payment of taxes, attendance and devotion to Christianity and Christian principles, and attendance at a 96-day drug and alcohol rehabilitation center where, he asserts, he got the help he needed to overcome his addictions and lead a crime, drug, and alcohol free life. In response to a request for evidence, the Applicant submitted a panel physician evaluation, which confirmed that he was in full remission from his addiction or abuse of any substances found in the Controlled Substance Act. Additional evidence submitted includes a drug screening report, a medical clinic's letter, records of criminal dispositions, a certificate of completion for an alcohol/drug safety education course, a certificate for a marriage counseling course, and an additional personal statement.

The CBP ARO carefully considered all the evidence and, using the factors outlined in *Matter of Tin* and *Matter of Lee*, determined that the positive factors were insufficient to overcome the negative impact of the Applicant's serious violations of criminal and immigration laws. It was noted that there was insufficient evidence of rehabilitation and reformation because no evidence was provided to establish the scope of his 96-day rehabilitation center stay. Furthermore, the CBP ARO found it significant that the Applicant did not provide evidence "of [his] interest or participation in sustained and targeted rehabilitative [efforts]" addressing the "destructive effects that controlled substance trafficking has on society." The CBP ARO also noted the Applicant's statement lacked remorse and failed to take responsibility for his criminal actions and for how his actions and criminal behavior

impact society. Finally, it was noted that his statements lacked "sincere . . . remorse commensurate with the seriousness of [the Applicant's] criminal behavior" and that any remorse stemmed from a personal self-interest to freely visit the United States.

The Applicant's additional inadmissibility grounds to the United States under sections 212(a)(2)(A)(i)(I) (for commission of crimes involving moral turpitude), 212(a)(2)(A)(i)(II) (for commission of controlled substances violations), and 212(a)(2)(C)(i) of the Act (for being a controlled substance trafficker) were additional negative factors considered. Finally, the CBP ARO noted that there was insufficient evidence of hardship to the Applicant or his relatives if his application was not granted, and that there was no evidence to establish that the Applicant's services were needed in the United States.

On appeal, the Applicant asserts that the decision did not take into account the totality of his positive factors. He states he submitted several character reference letters and that he takes full responsibility for his bad actions and breaking the law. The Applicant further asserts that he is a "new" person "after accepting Christ as [his] Savior . . . ." He submits additional evidence, including a letter from the 96-day rehabilitation center he attended and before and after photographs to show how he has physically changed since he became sober. He also provides a lengthy personal statement generally expressing remorse for his actions and their affect on the United States. In addition, he explains how his completion of a 12-step rehabilitation program has led to his "drug free" life, and that he takes care not to associate with people who make poor decisions, and instead seeks to make positive, lawful actions that reflect well on his community.

We have reviewed the entire record and, for the reasons explained below, agree with the CBP ARO that the evidence is insufficient to show that a favorable exercise of discretion is warranted.

The most significant negative factors in the Applicant's case are his criminal acts and immigration violations. Although we commend the Applicant on his efforts to transform his personal character and acknowledge that he appears to have established a solid working history in Canada (and through his efforts, has restored his previously-suspended driving privileges), the evidence does not address other negative factors in his case. For instance, as explained above, he is subject to several other grounds of inadmissibility due to his criminal history. In addition to those noted in the decision under review, he also appears inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence. Furthermore, while we find the Applicant's appeal statement more directly addresses his remorse for past bad actions, it remains vague. He describes how he has proactively sought rehabilitation, which is commendable. However, his efforts have not gone on long enough to overcome the severity of his past bad actions and crimes, which include driving under the influence of drugs and alcohol, selling controlled substances to fund his own addiction, violating vehicle public safety laws, and missing court dates. His crimes and violations span from 2002 to 2018, in both Canada and the United States, and an insufficient amount of time has passed since his removal in 2014 to determine if his rehabilitation is complete enough to overcome the significant negative factors in his case. And, while it appears he has been drug and alcohol free since 2018 (approximately four years), his record of criminal and civil violations spans 16 years.

We also agree that there is insufficient evidence of the hardship he or his family members would face if he were not permitted to visit family in the United States. While we acknowledge that his wife is a

U.S. citizen with immediate family in the United States and that he has extended family members here, he has not provided evidence of the hardships these family members would face if he were not permitted to visit them. For example, the record does not establish that they could not visit him in Canada to maintain strong familial ties, whether his wife has travelled to the United States to visit her family without him, or if his wife is unable to travel alone to the United States.

Consequently, we agree with the Director that the Applicant has not demonstrated that the positive factors in his 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.