



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 27190543

Date: JULY 21, 2023

Appeal of New York City, New York Field Office Decision

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

The Applicant, who has requested an immigrant visa abroad, 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 be inadmissible upon departing from the United States for having been previously ordered removed.<sup>1</sup> 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 New York City, New York Field Office denied the Form I-212, concluding that the Applicant did not merit a favorable exercise of discretion because the positive factors in his case did not outweigh the negative ones. The matter is now before us on appeal.

On appeal, the Applicant asserts that the Director improperly considered his arrest and inconsistent statements about his date of birth as adverse factors in the discretionary analysis, and the denial was therefore in error. Although the Applicant indicated on the Form I-290B that he would submit a brief and/or additional evidence to our office within 30 calendar days of filing the appeal, we have not received any further correspondence from the Applicant to date and consider the record complete.

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.

Section 212(a)(9)(A)(i) of the Act provides in relevant part that a noncitizen who has been ordered removed under section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1), or at the end of proceedings under section 240 of the Act, 8 U.S.C. § 1229a, initiated upon the noncitizen's arrival in the United States,

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<sup>1</sup> The regulation at 8 C.F.R. § 212.2(j) provides that a noncitizen whose departure will execute an order of exclusion, deportation, or removal may, prior to leaving the United States, seek conditional approval of an application for permission to reapply for admission. The approval of the Applicant's Form I-212 under these circumstances is conditioned upon his departure from the United States and would have no effect if he does not depart.

and who again seeks admission within five years of such removal is inadmissible. Noncitizens inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission 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. Section 212(a)(9)(A)(iii) of the Act.

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).

The record reflects that in [ ] 2010 the Applicant was apprehended by U.S. Customs and Border Protection (CBP) officers and placed in removal proceedings under section 235(b)(1) of the Act as an immigrant not in possession of a valid entry document required by the Act. While in removal proceedings, the Applicant requested asylum and withholding of removal. An Immigration Judge denied the request in 2017, finding that the Applicant's testimony lacked credibility, and ordered him removed to India. The Board of Immigration Appeals (the Board) dismissed the Applicant's appeal of that decision affirming the Immigration Judge's adverse credibility determination. The Board concluded, in part, that the Applicant provided inconsistent and confusing testimony and evidence regarding his date of birth, and that his varying excuses for the inconsistencies undermined his overall credibility. Specifically, while the Applicant testified during his July 2010 credible fear interview that he was born in 1987, and that he previously told the CBP officer he was born in 1988 because he was afraid, when he was arrested in Michigan in [ ] 2010, he told the arresting officer he was born in 1988. When asked to explain the discrepancy, the Applicant stated that he claimed the 1988 date of birth because he was nervous and scared, but then indicated that he did not discover he was born in 1987 until after he was released from detention, which further confused the matter as the record showed he provided the 1987 date of birth while in detention. The Board agreed that the Applicant's testimony concerning the substance of his asylum claim was also not credible, his explanations for the inconsistencies were unpersuasive, and the corroborating evidence he submitted did not rehabilitate his claims.

The Applicant remained in the United States after the Board dismissed his appeal. He is now married to a U.S. citizen, and is the beneficiary of an approved Form I-130, Petition for Alien Relative, his spouse filed on his behalf. As stated, the Applicant is seeking advance permission to reapply for admission before he departs from the United States to obtain an immigrant visa.

In denying the application, the Director determined that the positive factors in the case, including the Applicant's marriage to the U.S. citizen, the claimed hardship to his spouse, employment, and evidence that he paid taxes in 2018, were not sufficient to overcome the 2010 arrest, non-compliance with the removal order, and inconsistent testimony, all indicative of his poor moral character.

The Applicant asserts that the Director erred in reaching this conclusion, and did not consider that in India “many persons in the remote villages do not know their dates of birth with certainty,” and his inconsistent statements should not have been taken into account because they occurred many years ago. He further states that the Director also improperly drew negative inference from “a mere arrest” without analyzing the underlying facts, because “a person can be in the wrong place or actively misled by a wrongdoer leading [sic] to an arrest,” as he claims happened in his case. We acknowledge the Applicant’s statements, but conclude that they are not sufficient to overcome the Director’s discretionary determination.

As stated, in determining whether an applicant warrants a favorable exercise of discretion, USCIS considers multiple factors, including the applicant’s moral character, their respect for law and order, and evidence of reformation and rehabilitation. Here, the record reflects that the Applicant provided inconsistent testimony concerning his true date of birth, and his explanations for the inconsistencies were found to be not credible. While the Applicant now indicates, as an initial matter, that he was confused about his own date of birth because many people in remote parts of India do not know their dates of birth, the record includes a copy of his birth certificate, registered in 2010, which reflects he was born in [REDACTED] 1987. We also note that on his asylum application the Applicant indicated he attended a children’s school in [REDACTED] India from April 1991 (apparently since he was four years old) through March 1998. Given this evidence, the Applicant’s explanation on appeal concerning his date of birth does not resolve his prior inconsistent testimony, which was found to undermine his overall credibility concerning eligibility for asylum. While the Applicant provided this testimony years ago, we consider the resulting adverse credibility finding to be a significant negative factor that weighs against him in the discretionary analysis.

The Applicant also has not demonstrated that the Director erred by concluding that his 2010 arrest was a negative factor. The record reflects that the Applicant was arrested in [REDACTED] Michigan in [REDACTED] 2010, and charged with furnishing alcohol to a minor, or intoxicated or disorderly person, in violation of the city ordinance – a misdemeanor. He was convicted of this offense upon a plea of guilty in [REDACTED] 2011, and ordered to pay a fine and court costs. The conviction is another adverse factor, especially given that the Applicant does not explain the circumstances underlying his arrest and conviction, and he does not acknowledge any responsibility for his actions, indicating only that he was arrested because he was in the wrong place and was misled by a wrongdoer. This points not only to his poor moral character, but also to lack of reformation and rehabilitation – both negative factors.

We recognize that there are some positive factors in the case; specifically, the Applicant’s marriage to a U.S. citizen, the claimed hardship to his spouse if he must remain abroad for the entire inadmissibility period, as well as his longtime residence in the United States, employment as a driver, payment of taxes in 2018, and no apparent criminal history since 2011. However, the weight of these favorable equities is diminished by the fact that the Applicant’s residence in the United States since 2017 has been unlawful and his employment unauthorized.

Given the evidentiary deficiencies discussed above and the diminished weight of the favorable factors, we conclude that the Applicant has not met his burden of proof to show that the positive factors in his case are sufficiently meritorious to outweigh the negative impact of the adverse credibility finding, non-compliance with the removal order, longtime unlawful presence in the United States,

unauthorized employment, his misdemeanor conviction, lack of evidence of rehabilitation, and apparent absence of close family ties in the United States other than his U.S. citizen spouse.

Consequently, we agree with the Director that a favorable exercise of discretion is not warranted at this time, and the Applicant's request for permission to reapply for admission to the United States remains denied.

**ORDER:** The appeal is dismissed.