U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24613265

Date: MAR. 17, 2023

Appeal of Spokane, Washington Field Office Decision

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

The Applicant, a citizen of Canada, seeks 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 Director of the Spokane, Washington Field Office denied the Form I-212, Application for Permission to Reapply for Admission to the United States After Deportation or Removal, concluding that the Applicant did not establish she was eligible to seek permission to reapply for admission because she had not yet attended an immigrant visa interview with the U.S. Consulate. The Applicant appealed the Director's decision to us, asserting the Applicant is an applicant for an immigrant visa and is not required to attend an immigrant visa interview before filing the Form I-212 and that the Director failed to properly adjudicate the Form I-212. The matter is now before us on appeal. 8 C.F.R. § 103.3. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 212(a)(9)(A)(i) of the Act provides in relevant part that any noncitizen who has been ordered removed under Section 235(b)(1) of the Act, and who seeks admission within five years of the date of such departure or removal is inadmissible. 8 U.S.C. § 1182(a)(9)(A)(i). 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 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. 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).

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). Generally, favorable factors that came into existence after a noncitizen has been ordered removed from the United States are given less weight in a discretionary determination. *See Garcia-Lopes v. INS*, 923 F.2d 72, 74 (7th Cir. 1991) (less weight is given to equities after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (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).

The Applicant is currently outside the United States and seeks permission to reapply for admission. In March 2020, the Applicant sought admission to the United States as a nonimmigrant visitor at the [redacted] Washington port of entry. She was denied admission after stating to a U.S. Customs and Border Protection (CBP) officer that she had previously travelled to the United States multiple times, and on one of those trips, she married a U.S. citizen. She further stated that she was trying to enter the United States for the purpose of purchasing a home in Seattle. Based on her responses, CBP determined she was not an intending nonimmigrant, and she lacked proper travel documents to enter as an intending immigrant. As a result, the Applicant was ordered removed from the United States pursuant to Section 235(b)(1) of the Act.

The Applicant married her U.S. citizen spouse in [redacted] 2020. Her spouse filed a Form I-130, Petition for Alien Relative, on her behalf, and that petition has been approved. The Applicant filed her Form I-212, which the Director denied in June 2022, and the Applicant has appealed that denial to us.

In denying the Form I-212, the Director found the Applicant did not establish she was an applicant for an immigrant visa and eligible to file the Form I-212 because the record lacked evidence that she had attended a visa interview. The Director stated that because she had not attended a consular interview, the Applicant had not shown she was not inadmissible on another ground that would require a concurrent waiver under section 212(g), (h), or (i) of the Act.[1] However, the Applicant, consistent with the Form I-212 instructions, provided her Department of State Consular Case Number and the location of the U.S. Embassy or U.S. Consulate where she intended to apply for her visa. Thus, we conclude she has established she has sought, or intends to seek, an immigrant visa to the extent required by the Form I-212 instructions. In denying the application, the Director did not consider the evidence and weigh the positive and negative factors to determine whether a favorable exercise of discretion is warranted. Therefore, we withdraw the Director's decision and remand this matter for the Director to weigh the positive and negative factors and determine whether the Applicant has established she merits permission to reapply for admission to the United States as a matter of discretion.

[1] The Applicant was found inadmissible and ordered removed under section 212(a)(7)(A)(i)(I) of the Act as an intending immigrant, and the record does not indicate that she has been found inadmissible under another ground that would require a concurrent Form I-601, Application for Waiver of Grounds of Inadmissibility. However, we note that once the Applicant has attended an immigrant visa interview, the consular officer will make a final determination of whether the Applicant is inadmissible for any other grounds and advise her accordingly whether she also requires a Form I-601.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.