U.S. Citizenship and Immigration Services

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

In Re: 22978778

Date: MAR. 17, 2023

Appeal of Irving, Texas Field Office Decision

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

The Applicant, a native and citizen of Mexico, 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 Irving, Texas Field Office denied the Form I-212, Application for Permission to Reapply for Admission to the United States After Deportation or Removal, concluding the Applicant did not establish eligibility for the benefit he sought. The matter is now before us on appeal. 8 C.F.R. § 103.3. The Applicant asserts the Director did not take into consideration all the relevant positive factors in adjudicating the application and erred as a matter of law in concluding the Applicant failed to include the required initial evidence with his application. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

## I. LAW

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.

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).

## II. ANALYSIS

The Applicant is currently outside the United States, residing in Mexico, and seeks permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(d) before he reenters the United States. The Applicant does not contest he is inadmissible under section 212(a)(9)(A)(i) of the Act because he was previously ordered removed. The only issue – initially before the Director and now before us on appeal – has been whether the Applicant has demonstrated that approval of his Form I-212 is warranted as a matter of discretion.

The Applicant, a native and citizen of Mexico, sought admission to the United States as a B-2 visitor in August 2020 at the Dallas-Fort Worth airport. At that time, the Applicant admitted he had previously been admitted as a B-2 nonimmigrant, had been employed in the United States, and intended to seek continued employment with the same company, in violation of the terms of his B-2 nonimmigrant status. As a result, the Applicant was ordered removed from the United States pursuant to Section 235(b)(1) of the Act. The Applicant has remained outside the United States, residing in Mexico since that removal. The Applicant married his spouse, a U.S. citizen, in Mexico in [redacted] 2020. In May 2021, the Applicant filed a Form I-212, and that application was denied in July 2021. The Applicant's spouse subsequently filed a Form I-130, Petition for Alien Relative, on behalf of the Applicant and that petition was approved in February 2022. The Applicant then filed the current Form I-212 in March 2022. The Director denied the application after finding the Applicant did not establish eligibility for the benefit sought.

On appeal, the Applicant argues the Director failed to conduct the requisite analysis under *Matter of Tin*, and further failed to identify what initial evidence was missing. We agree. In denying the application, the Director stated, "[t]he I-212 does not include the required initial evidence in compliance with the regulation. As such, you have not established eligibility for the benefit sought." The Director's decision does not identify the missing "required initial evidence", nor was any missing evidence indicated in a request for evidence (RFE) or notice of intent to deny (NOID) prior to the issuance of the adverse decision. The Director's decision includes a summary of the July 2021 denial of the Applicant's previously-filed Form I-212, noting that the current Form I-212 filing contains virtually identical evidence in support. The decision lists each item's determined evidentiary value identifies two favorable factors -- his marriage to a U.S. citizen and lack of criminal record, and discusses the Applicant's history of working without authorization in violation of his B-2 nonimmigrant status. Upon our de novo review, we conclude the Director did not conduct the requisite analysis and fully weigh all of the positive and negative factors. Although the Director listed evidence submitted by the Applicant, he did not consider all the evidence submitted in support of the application,

including letters of support from friends and family members, in determining whether approval of the Form I-212 was warranted as a matter of discretion.

Further, the Director noted that the evidence did "not support any claims of extreme hardship to [the Applicant's] U.S. citizen spouse." However, extreme hardship to a qualifying relative is not a requirement for permission to reapply for admission. When considering whether a request for permission to reapply warrants a favorable exercise of discretion, favorable factors may include hardship to the applicant and U.S. citizen or lawful permanent resident relatives, the applicant's length of residence in the United States, and family responsibilities.[1]

In light of the deficiencies noted above, we will 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 he merits permission to reapply for admission as a matter of discretion.

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

[1] *See Matter of Tin*, 14 I&N Dec. at 373.