U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25424957

Date: MAY 18, 2023

Appeal of Los Angeles, California Field Office Decision

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

The Applicant 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), because she will be inadmissible upon departing from the United States for having been previously ordered removed. *See* section 212(a)(9)(A)(ii) of the Act.

The Director of the Los Angeles, California Field Office denied the application, concluding that the Applicant did not establish that a favorable exercise of discretion was warranted in her case. On appeal, the Applicant does not contest inadmissibility, which is supported by the record. Rather, she submits additional documentation and contends that the Director did not properly weigh the favorable factors against the unfavorable factors in her case.

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, as explained below, we will remand the matter to the Director for the entry of a new decision.

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen, 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 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, is inadmissible. Noncitizens 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 States or attempt to be admitted from foreign continuous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

The Applicant currently resides in the United States, and she is seeking conditional approval of her application under the regulation at 8 C.F.R. § 212.2(j) before departing the United States to apply for an immigrant visa. The approval of her application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if she fails to depart.

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); *see also Matter of Lee*, *supra*, at 278 (finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character, and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience.")

Generally, favorable factors that came into existence after a noncitizen has been ordered removed from the United States ("after-acquired equities") 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 acquired 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 a native and citizen of El Salvador who entered the United without authorization in 2005; she was subsequently apprehended and placed in removal proceedings. The Applicant was ordered removed in [redacted] 2011. The Board of Immigration Appeals dismissed her appeal in November 2012, and a motion to reopen was denied in February 2013. The record indicates that the Applicant has not departed the United States to date. The issue presented on appeal is whether the Applicant should be granted conditional approval of her application for permission to reapply in the exercise of discretion. After considering the record in its entirety, including documents submitted on appeal, we find that the matter should be remanded to the Director for the entry of a new decision.

In the decision to deny the application, the Director referenced the Applicant's unfavorable factors, including her entry to the United States without authorization, the removal order, the Applicant's failure to comply with the Immigration Judge's order of removal, the Applicant's periods of unauthorized presence and employment in the United States, her false statement to USCIS by not listing her brother's name as a family member residing in El Salvador, and her failure to demonstrate her determination to respect the Board of Immigration Appeal's decisions by appealing their adverse decisions multiple times, thereby delaying her departure from the United States.

Regarding favorable factors, the Director acknowledged the approval of the Form I-130, Petition for Alien Relative, on her behalf; family ties in the United States, including her lawful permanent resident mother; the Applicant's apparent lack of a criminal record; and the prospect of emotional hardship to the Applicant's mother if the Applicant relocated abroad due to her inadmissibility. However, the Director determined that the record did not establish that the Applicant's mother would experience

hardship would she to relocate to El Salvador with the Applicant.[1] The Director further found that the Applicant had family ties in El Salvador, including a brother she had failed to disclose to USCIS, and thus, her "favorable factors in terms of family ties to the United States will be greatly reduced." The Director also stated that the Applicant's claim that she could not afford to relocate to El Salvador was not credible because she had been able to spend her own money to hire an attorney to file an appeal with the Board of Immigration Appeals. The application was denied accordingly.

On appeal, the Applicant s contends that the Director erred when determining that her mother would not experience hardship were she to relocate abroad with the Applicant. She explains that medical care is limited and below U.S. standards in El Salvador, and as a lawful permanent resident, she has a right to seek out the best medical care in the United States. The Applicant further details that she did not disclose the presence of her brother in El Salvador because she does not maintain close ties to him. Regarding the Director's finding that the Applicant's "entire family members have a history of entering the United States without inspection," the Applicant maintains that such a finding is not relevant to her case. The Applicant also states that it is her "constitutional right to hire an attorney" to assist her with her immigration proceedings and as such, should not discredit her claim that she will not be able to support herself were she to move permanently to El Salvador. Finally, the Applicant asserts that the Director's contention that appealing a decision is not a trait of a law-abiding individual is "baseless" and "derogatory."

We find that the Director did not address the evidence of additional significant favorable factors in the record, including hardships to the Applicant. The record before the Director contained documentation of the Applicant's long-term residence and family ties in the United States, including her mother, siblings, aunts and uncles, a niece, a son, and a U.S. citizen daughter. The record also contained a declaration from the Applicant detailing the hardships she would experience were she unable to remain in the United States and apologizing for her violation of immigration laws. She contends if she relocated abroad, her mother will spiral into a depressive episode and will not be able to continue her daily routine, thereby causing hardship to the Applicant as she will not be able to help her on a daily basis. She also contends that she would be starting from zero in El Salvador, thereby making it difficult to support herself and her family in the United States. Alternatively, if her mother relocated with her, it would be a psychological blow that would negatively impact the Applicant. The Applicant also submitted documentation about the problematic country conditions in El Salvador; as noted by the U.S. Department of State, U.S. citizens should reconsider travel to El Salvador due to violent crime. The record also included a psychological evaluation detailing the hardships the Applicant's mother will experience if her daughter relocates abroad. In addition, on appeal the Applicant submits affidavits from her mother, her aunt, and her sister, addressing concerns raised by the Director and detailing the hardships the Applicant and her family will experience if she is unable to remain in the United States and a copy of the Applicant's daughter's U.S. birth certificate.

Considering the documentation submitted on appeal, and because the Director's decision did not appear to properly weigh all the positive factors in the Applicant's case, we find it appropriate to remand the

[1] Hardship to a qualifying relative is not a requirement when conducting a discretionary analysis for purposes of permission to reapply for admission; it is a favorable factor that may be considered.

matter for the Director to reevaluate the record in its entirety, including the documentation submitted on appeal, to determine whether the Applicant has established that she merits a favorable exercise of discretion.

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