U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27693244

Date: OCT. 11, 2023

Appeal of Newark, New Jersey 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 he is inadmissible for having been previously ordered removed. *See* section 212(a)(9)(A)(ii) of the Act.

The Director of the Newark, New Jersey Field Office denied the application, concluding that the Applicant did not establish that a favorable exercise of discretion was warranted in his case. On appeal, the Applicant does not contest inadmissibility, which is supported by the record. Rather, he contends that the Director did not properly weigh the favorable factors against the unfavorable factors in his 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.

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.")

The Applicant is a native and citizen of Guatemala who entered the United States without authorization in 2014 . The Applicant was ordered removed in absentia in [redacted] 2016. The Applicant filed a motion to reopen the in absentia removal order in 2017. Proceedings were reopened and the Applicant was ordered removed in [redacted] 2019. The issue presented on appeal is whether the Applicant should be granted approval of his application for permission to reapply in the exercise of discretion. After considering the record in its entirety, 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 the Applicant's entry to the United State without authorization, his 2019 removal order, the failure to depart the United States after he was ordered removed, the Applicant's periods of unlawful presence and employment in the United States, and his 2016 traffic violations. The Director also noted that the record did not establish that the Applicant's spouse would experience extreme hardship were the Applicant to relocate abroad.[1] Regarding favorable factors, the Director acknowledged the Applicant's 2016 marriage to a naturalized U.S. citizen, his self-employment in 2019, and the filing of a tax return in 2019. The Director concluded that the favorable factors did not outweigh the unfavorable factors in the Applicant's case and denied the application accordingly.

On appeal, the Applicant contends that the Director failed to consider all the positive factors in his case, including the hardships he would experience were he to relocate abroad. He asserts that he would not be able to financially support his spouse while in Guatemala due to the problematic economic situation there. He also explains that he is his wife's greatest source of support and she would be negatively affected if he departed the United States, thereby causing him hardship. Furthermore, he references as additional positive factors his role as primary financial provider for the family and his ties to the United States. Documentation in the record includes evidence that the Applicant owns a business and has been residing in the United States for nearly a decade. The record also contains documentation that the Applicant has paid taxes in the United States, has no apparent criminal record, is the beneficiary of an approved for a Form I-130, Petition for Alien Relative, and is regretful for his immigration violations.

The Applicant's spouse provides her own statement, detailing the hardships she will experience were the Applicant to relocate abroad. She explains that they have been together since 2014, and married since 2016. She further details that her parents and brother live with her and the Applicant in the United States and she has no ties to Guatemala. She also details that her spouse is the primary financial

[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.

provider for the family. She maintains that the Applicant is her best friend and soul mate and her world "will come crashing down" if he is not allowed to stay in the United States. The Applicant's in-laws provide their own letters detailing the hardships their daughter and son-in-law will experience if the Applicant resides abroad, and the Applicant's work ethic and love for his family. The Applicant has also submitted support letters from friends that have known him for over a decade, attesting to his "great work ethic, integrity and kindness." The record also contains certificates issued to the Applicant for his participation in English as a Second Language courses at the community college.

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 matter for the Director to reevaluate the record in its entirety to determine whether the Applicant has established that he 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.