U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29649188

Date: JAN. 4, 2024

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, a native and citizen of Peru, was found inadmissible for 10 years after departing the United States under an order of removal and seeks permission to reapply for admission to the United States prior to the expiration of this inadmissibility on January 1, 2029. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). 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 Newark, New Jersey Field Office denied the Form I-212, Application for Permission to Reapply for Admission (application for permission to reapply), concluding that the record did not establish that the Applicant's favorable factors outweighed her unfavorable factors and therefore she did not merit a favorable exercise of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a foreign national who has been ordered removed under section 240 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. Foreign nationals 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) 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 foreign national'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. *See 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. *See 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").

II. ANALYSIS

The Applicant was ordered removed from the United States on [redacted], 2014. The Board of Immigration Appeals (the Board) dismissed her appeal on June 11, 2015, and she departed the United States on [redacted], 2019. The Applicant became inadmissible under section 212(a)(9)(A)(ii) of the Act upon departing the United States, and she then filed her application for permission to reapply.[1]

The Director assessed whether the Applicant merited a favorable exercise of discretion. The Director listed the Applicant's favorable factors, including her U.S. citizen mother, lawful permanent resident (LPR) sister, U.S. citizen brother, and three adult U.S. citizen children. The Director also listed the Applicant's mother's medical conditions and her claim that Peru has poorer country conditions than the United States. However, the Director mentioned issues with some of her favorable factors. First, the Director acknowledged the Applicant's statement that her mother relies on her, but stated there is nothing preventing her siblings from caring for their mother. Second, the Director mentioned the Applicant's U.S. citizen children are adults who can care for themselves, and a non-citizen illegally in the United States does not gain favored status by the birth of children in the United States. Third, the Director referenced the Applicant's claim that Peru has poorer country conditions than the United States but noted that most removed individuals will experience some degree of financial hardship.

The Director then listed the Applicant's unfavorable factors, including her 2009 conviction for hindering prosecution, for which she served 366 days in jail and received two years of probation, and her 1999 arrest for endangering the welfare of a child and possession of a controlled dangerous substance. The charges for endangering the welfare of a child and possession of a controlled dangerous substance were dropped after the Applicant completed a pre-trial intervention program. Finally, the Director considered the minimal time the Applicant has spent outside of the United States as an unfavorable factor. The Director determined that the Applicant's favorable factors did not outweigh her unfavorable factors and therefore she did not merit a favorable exercise of discretion.

The issue on appeal is whether the Applicant merits a favorable exercise of discretion. In making our decision, we will consider the Applicant's appellate brief and the evidence previously submitted,

[1] The Applicant does not contest the finding of inadmissibility on appeal.

which the Director listed and we hereby incorporate by reference. The Applicant asserts that the Director failed to weigh all the evidence and did not conduct a meaningful discretionary analysis. Specifically, the Applicant contends that while she provided evidence that her mother relies on her, the Director discounted this by stating that the Applicant's mother is being cared for by her son and nothing prevents her other children from caring for her. The Applicant claims that the Director did not take into account her mother's wishes and assumes the other children can care for her; her mother may have a better relationship with her; and she is better at caretaking than her siblings. Next, the Applicant states that her children are favorable factors and their status as adults does not mitigate the hardship they would experience.

In regard to her negative factors, the Applicant asserts that her arrest for endangering the welfare of a child and possession of a controlled dangerous substance was improperly considered as she did not plead guilty, and the charges were dismissed as part of a pre-trial intervention program. The Applicant also states that factoring in the recency of her removal was misplaced and accorded too much weight.

We will now address the Applicant's favorable and unfavorable factors. The Applicant's favorable factors include her U.S. citizen mother, brother, and three adult children; her LPR sister; emotional hardship her mother would experience without her; and her statement of remorse. However, the Applicant has not provided supporting documentary evidence that a sibling could not care for her mother, or of the hardship her adult children would experience without her. Additionally, the record does not establish the level of hardship she would experience in Peru, and we will therefore not consider hardship in Peru as a favorable factor. The Applicant's unfavorable factors include her multiple arrests and conviction for serious crimes.[2] Her 2009 conviction for hindering prosecution resulted in her serving 366 days in jail and receiving two years of probation. As such, we consider this a serious offense and a significant unfavorable factor. Furthermore, the Applicant's indictments for endangering the welfare of a child and possession of a controlled dangerous substance reflect that she possessed heroin and purchased heroin in the presence of her then two-year-old child. Although the charges were dismissed, we may properly consider them in our exercise of discretion. *See Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996) (citing to *Matter of Grijalva*, 19 I&N Dec. 713 (BIA 1988) and *Matter of Thomas*, 21 I&N Dec. 20 (BIA 1995)) (finding that we may look to police records and arrests in making a determination as to whether discretion should be exercised); *Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995) (declining to give substantial weight to an arrest absent a conviction or other corroborating evidence, but not prohibiting consideration of arrest reports).

Viewing the totality of the circumstances, we determine the Applicant has not established her favorable factors outweigh her unfavorable factors. Therefore, a favorable exercise of discretion is not warranted, and the application will remain denied.

ORDER: The appeal is dismissed.

[2] We will not consider the length of the Applicant's time outside of the United States as an unfavorable factor.