



**U.S. Citizenship
and Immigration
Services**

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

In Re: 12066956

Date: MAR. 8, 2021

Appeal of Reno, Nevada Field Office Decision

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

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 will be inadmissible upon departing from the United States for having been previously ordered removed. 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 Reno, Nevada Field Office Director concluded that the Applicant's favorable factors did not outweigh the unfavorable factors and denied the application as a matter of discretion. On appeal, the Applicant submits additional evidence and argues that the Director failed to consider all factors and give them appropriate weight.

The Applicant bears the burden of proof in these proceedings to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This office reviews the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for additional review and the entry of a new decision.

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) 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 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. *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 currently resides in the United States and is seeking conditional approval of his 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 the application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if he fails to depart.

II. ANALYSIS

The record reflects that the Applicant is a native and citizen of Nicaragua who entered the United States without inspection along the Texas-Mexico border in [redacted] 2004, was apprehended by U.S. Border Patrol agents, and was then placed in removal proceedings. A Form I-213, Record of Deportable/Inadmissible Alien, dated [redacted] 2004, indicates that the Applicant was released on his own recognizance due to a lack of detention funds but did not provide an address for a relative in Nevada where he intended to reside. An Order of Release on Recognizance instructs the Applicant to report to a deportation officer. In [redacted] 2004 an Immigration Judge ordered the Applicant removed *in absentia* from the United States. The Applicant has not departed and states that he is seeking conditional approval of the instant application under the regulation at 8 C.F.R. § 212.2(j) before departing from the United States to seek an immigrant visa at a U.S. consulate abroad, as he will be inadmissible upon his departure due to a prior removal order.¹ The issue on appeal is whether the Applicant has established that he merits approval as a matter of discretion.

With the application the Applicant submitted affidavits from himself and his spouse along with letters from his children; financial records including tax returns and his spouse's state business license; the Applicant's 2018 certificates for high school equivalency classes and for English language instruction; letters of support from family, friends, church, staff at an adult literacy and language program, and the Applicant's employer; school certificates for the children; civil documents; photographs; court records indicating the Applicant's traffic violations; and country conditions information for Nicaragua. With the appeal the Applicant submits a brief, a Spanish-language personal statement; a psycho-social evaluation of his spouse; and evidence related to his prior representative.

In denying the application, the Director found that the unfavorable factors outweigh the favorable factor, which the Director identified as the Applicant's close family ties to the United States. The

¹ The Applicant will also be inadmissible under section 212(a)(9)(B) of the Act for accruing unlawful presence in the United States once he departs.

Director noted that the Applicant claimed hardship to his family and business if he left the United States and that he apologized for entering the United States unlawfully. The Director identified the unfavorable factors as the Applicant's repeated violations of immigration laws, unauthorized employment in the United States, and serious violation of immigration laws which evidences a callous attitude without hint of reformation of character. The Director determined that the Applicant entered the United States without inspection, failed to depart following a removal order, has been employed without authorization, and did not show any attempt to abide by immigration laws.

On appeal, the Applicant contends that he works full time to provide his family financial support and helps his spouse run a business, but his wife could not run the business and care for the children. He asserts that Nicaragua is dangerous, that his family would be unable to obtain effective medical care there, and that the children would be deprived of the opportunity to be raised in the United States. The Applicant refers to documentation of his children's school, his own accomplishments, and letters of support, and claims his positive equities are a lack of criminal record, gainful employment, payment of taxes, running a business, and long-term community ties. The Applicant concedes these are "after-acquired equities"² but argues that they nevertheless overcome the negative impact of his illegal entry and removal order of more than 15 years ago, and that his immigration violation should be mitigated by his young age at the time, his inability to speak English, and his attempts to change venue through someone whom he believed to be an attorney. The Applicant contends that he did not willingly disregard his obligation to the court but was victim of immigration fraud. He maintains that following release from detention he paid a firm for assistance to change court venue from Texas to California, learned later that he had been ordered removed, and then paid the firm in 2005 to apply for a waiver. The Applicant contends he only learned in 2016 that the firm was not allowed to give legal advice as there were no attorneys employed. With the appeal the Applicant submits a court-ordered notice from the firm indicating they are not attorneys and providing information on filing a complaint. The Applicant also submits copies of online complaints about the firm.

The Director identified the Applicant's sole positive factor as his family ties to the United States, but the decision does not reference submitted evidence or address other factors, including the Applicant's length of residence with no criminal record; long-term employment, albeit without work authorization; payment of taxes since 2007; and multiple letters of support. Nor does the decision address hardship to the Applicant's U.S. citizen spouse and three minor children. With the appeal the Applicant supplements the record with a psycho-social evaluation of his spouse. As noted above, factors to be considered in determining whether to grant permission to reapply include hardship involved to the applicant and others.

Thus, in light of the deficiencies noted above and given the positive factors with the lack of analysis in the decision, we are remanding the matter for the Director to review the record and determine whether the Applicant merits a conditional approval of his Form I-212 in the exercise of discretion. On remand, the Director shall review and weigh all positive and negative factors with consideration to all evidence presented, including additional evidence submitted on appeal.

² Legal decisions have established the general principle that less weight is given to equities acquired after a deportation order had been entered. The record here shows that the Applicant was ordered removed in 2004 but married his spouse in 2005 with their children born in 2005, 2007, and 2014.

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