U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30091576

Date: FEB. 8, 2024

Appeal of New York, New York 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 Ecuador, 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.[1] 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 New York, New York Field Office (Director) denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding that the application did not merit approval as a matter of discretion. The matter is now before us on appeal. On appeal, the Applicant submits a brief reasserting his eligibility for the benefit sought.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

[1] The Applicant seeks approval of his application under the regulation at 8 C.F.R. §212.2(j), which provides that a foreign national whose departure will execute an order of removal may, prior to leaving the United States, seek conditional approval of an application for permission to reapply 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*.

On appeal, the Applicant contends that the Director failed to adequately consider evidence of his favorable and mitigating factors including the medical, financial and psychological hardship to his U.S. citizen spouse and children. Specifically, the Applicant states that his spouse suffers from corneal opacity in the right eye, anxiety and depression and would suffer extreme psychological harm if he is unable to remain in the United States. He further states that he submitted evidence of financial hardship to his family including proof of his household expenses and monthly bills, none of which the Director considered.

While the Director considered the unfavorable factors in the Applicant's case,[2] we agree that the Director did not adequately consider all of the favorable and mitigating factors in his case. Specifically, the Director states that the Applicant's Form I-130, Petition for Alien Relative approval notice and his marriage to a U.S. citizen have "minimal probative value." However, she does not explain why that is when close family ties to the United States and the likelihood that an applicant will become a lawful permanent resident are two of the positive equities we consider for the Form I-212. Additionally, the Director determined that the Applicant's bank statements, utility bills and tax documents "support[ed] the existence of a bona fide marriage," but she did not evaluate the evidence in terms of hardship to the Applicant or his family. Lastly, the Director acknowledged the Applicant's evidence of medical hardship to his U.S. citizen spouse and children, but repeatedly stated that it would not cause "extreme hardship" to them. We note that, although hardship is one factor in determining whether a favorable exercise of discretion is warranted, an applicant is not required to show extreme hardship to be eligible for permission to reapply for admission. Rather, extreme hardship to a qualifying relative is a requirement for waivers of inadmissibility under sections 212(a)(9)(B)(v), 212(h) and 212(i) of the Act.

III. CONCLUSION

As the Director's decision does not reflect a proper analysis of the favorable and mitigating factors in the Applicant's case as required, we will remand the matter for entry of a new decision regarding the Applicant's eligibility for permission to reapply for admission.[3]

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[2] The Director found that the Applicant's unfavorable factors were his entry into the United States without admission or parole in November 2000 and his failure to appear at his hearing in Immigration Court in [redacted] 2019.

[3] The record indicates that the Applicant was ordered removed *in absentia* in [redacted] 2019. Accordingly, he may be subject to section 212(a)(6)(B) of the Act, which provides that "any foreign national who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the foreign national's inadmissibility or deportability, and who seeks admission to the United States within five years of the foreign national's subsequent departure or removal, is inadmissible."

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