U.S. Citizenship and Immigration Services

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

In Re: 29750978

Date: FEB. 16, 2024

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, who was removed from the United States and currently resides in the United Kingdom, 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. The Applicant was also found inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) and unlawful presence under section 212(a)(9)(B)(i)(II).

The Director of the Los Angeles, California Field Office denied the application as a matter of discretion, concluding that the favorable factors did not outweigh the unfavorable factors in the case. 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 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 contiguous 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 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, 373-74 (Reg'l Comm'r 1973).

## II. ANALYSIS

The record reflects that the Applicant, a native of Iran and citizen of the United Kingdom, entered the United States in 1994 under the Visa Waiver Program. He was placed in removal proceedings in 2002, an Immigration Judge denied his asylum application in 2012 and issued an order of removal, and the Board of Immigration Appeals dismissed his subsequent appeal. In 2018, the Applicant was removed to the United Kingdom and he is seeking consular processing to return to the United States. In 2022, the U.S. Department of State found the Applicant inadmissible under sections 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, 212(a)(9)(B)(i)(II) for unlawful presence, and 212(a)(9)(A)(ii) for having been previously ordered removed.

In support of the Form I-212 and in response to the Director's request for evidence, the Applicant submitted a personal affidavit; affidavits from his Lawful Permanent Resident spouse, whom he married in 2005, and his U.S. citizen children, who are currently 21 and 19 years old; letters of support from friends in the United States and his son, who resides in the United Kingdom; financial, educational, criminal history, and biographic documentation; family photographs; and an article about the effects of deportation on immigrants and their families. The Director acknowledged there were favorable considerations in the Applicant's case, including his family ties in the United States; history of paying taxes; and general hardship to the Applicant's spouse and children. The Director determined, however, that these favorable factors were insufficient to overcome the unfavorable factors of the Applicant's lengthy unlawful residence and unauthorized employment in the United States; non-compliance with the removal order; fraud indicators reflected in his immigration filings; and criminal history, especially in light of the lack of detailed information regarding the circumstances of his 2010 arrest for Inflicting Corporal Injury on Spouse.

On appeal, the Applicant asserts the Director did not take into account the totality of the discretionary factors and misconstrued the facts of his case. The Applicant submits a 2022 psychological evaluation for his spouse, which indicates she suffers from Major Depressive and General Anxiety Disorder, and copies of previously provided evidence. He asserts that continued separation from his spouse and children have resulted in emotional and financial hardship, his spouse cannot uproot their children to join the Applicant in the United Kingdom and endures the burden of being the family's primary breadwinner, their children have suffered mentally and financially without the Applicant in the United States, and his spouse and one of their children take medication to help their mental health.

Here, a review of the record supports the Director's conclusion that the evidence does not establish the favorable factors outweigh the unfavorable factors such that approval of the application is warranted as a matter of discretion. Concerning the Applicant's arrest in 2010 for Inflicting Corporal Injury on Spouse, the Applicant asserts on appeal that he and his spouse had an argument, the police arrived, he was briefly arrested for questioning, and no charges were filed. The Applicant refers to

the previously submitted letter from the District Attorney's office in Orange County, California, which reflects that the case was presented to their office for consideration of filing the misdemeanor charge of Penal Code § 273.5(a) and they declined filing the case. However, the record does not contain information establishing the circumstances of his arrest or indicating why the charge was not filed, aside from his statement. We note, for example, that his spouse's affidavit does not reference the 2010 arrest or provide information about the circumstances that led to the Applicant's arrest. Due to the lack of sufficient information regarding the arrest, especially in light of its serious nature, we are unable to fully assess the impact of his behavior as a potentially unfavorable factor.

In regard to the Applicant's claim that his spouse and children will continue to suffer financial hardship if he does not return to the United States, while the evidence includes information related to monthly expenses and we acknowledge his family may experience some financial difficulty without him, the record does not contain documentation reflecting current employment or income for the Applicant, his spouse, or his adult children. For example, the tax documentation in the record pertains to 2018 and earlier, prior to the Applicant's removal from the United States. We recognize that the Applicant's spouse was diagnosed with Major Depressive and General Anxiety Disorder and may face emotional difficulties without the Applicant. However, the record does not establish that his spouse lacks emotional support from her adult children or that she would be unable to obtain care from a mental health professional. Similarly, while the Applicant asserts that continued separation would cause significant emotional and financial hardship to his children, both children are adults and the record lacks evidence to show they are unable to support themselves in his continued absence.

The Applicant claims that he will suffer hardship if his Form I-212 is denied because he loves his family and wants to return to them in the United States, he established a successful life in the United States after his arrival in 1994, and his 2018 removal imposed financial and emotional hardships on his family. However, the record lacks evidence to demonstrate his family members are unable to visit him in the United Kingdom, that he is unable to provide financial support to his spouse and adult children in the United States, or that his family members require financial assistance from the Applicant. We also note the record contains a letter of support from the Applicant's adult son, who indicates he lives in the United Kingdom and runs a "multi-million pound company that operates in 45 countries[.]"

The evidence considered in its totality is insufficient to show the extent of the claimed emotional or financial hardship to the Applicant and his family that would result if the Form I-212 were denied. We recognize the favorable factors in the Applicant's case, including his family ties in the United States, history of paying taxes, the emotional and financial support he provides his family, and general hardship to the Applicant and his family. However, the record also contains significant unfavorable factors, such as the Applicant's lengthy unlawful presence and unauthorized employment in the United States, criminal history, and multiple inadmissibility findings. We agree with the Director that the positive factors considered individually and in the aggregate do not outweigh the negative factors. A favorable exercise of discretion is therefore not warranted, and the Applicant's request for permission to reapply for admission to the United States remains denied.

**ORDER:** The appeal is dismissed.