U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29657906

Date: JAN. 23, 2024

Appeal of Chicago, Illinois 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 Mexico, was found inadmissible for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year and seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii). 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 for those who seek admission after residing abroad for 10 years following their last departure.

The Director of the Chicago, Illinois 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 his unfavorable factors and therefore he 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 sustain the appeal.

I. LAW

Section 212(a)(9)(C)(i)(I) of the Act provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than 1 year, and who enters or attempts to reenter the United States without being admitted, is inadmissible.

Noncitizens found inadmissible under section 212(a)(9)(C)(i)(I) of the Act may seek permission to reapply for admission under section 212(a)(9)(C)(ii), which provides that inadmissibility shall not apply to a noncitizen seeking admission more than ten years after the date of last departure from the United States if, prior to the reembarkation at a place outside the United States or attempt to be readmitted from

a 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. *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 issue presented on appeal is whether the Applicant should be granted permission to reapply in the exercise of discretion. The Director mentioned that the Applicant entered the United States without being admitted in 2000, departed the United States in 2007, subsequently reentered the United States without being admitted in 2008, and departed the United States in December 2011. On appeal, the Applicant states that he inadvertently provided incorrect information. He states that he entered the United States in May 2000, departed the United States in October 2005, re-entered the United States in March 2006, departed the United States in December 2007, again re-entered the United States in May 2008, and departed the United States in November 2011. The record reflects that the Applicant's entries were made without being admitted, and he was in the United States without authorization during his three periods of stay here. The Applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, for entering the United States without being admitted after accruing more than one year of unlawful presence in the United States. The Applicant does not contest this finding of inadmissibility.

A noncitizen who is inadmissible under section 212(a)(9)(C)(i)(I) of the Act may not apply for consent to reapply for admission unless the noncitizen has been outside the United States for more than 10 years since the date of the noncitizen's last departure from the United States. *See Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006); *Matter of Briones,* 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez,* 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, it must be the case that the Applicant's last departure was at least 10 years ago, the Applicant has remained outside the United States, and USCIS has consented to the Applicant's reapplying for admission.

The Director noted that the Applicant departed the United States in 2011 and is eligible to seek permission to reapply. As the record reflects that the Applicant's last departure from the United States was at least 10 years ago, in 2011, and he has remained outside the United States, we will address whether the Applicant merits a favorable exercise of discretion. On appeal, the Applicant submits

evidence that was already in the record. He also submits new evidence that is in Spanish and does not include properly certified English language translations.[1] Therefore, we will not consider the new evidence in our decision.

The Director listed the Applicant's favorable factors, including financial hardship to his spouse, a psychological evaluation of his spouse, medical records for his spouse's father and his mother, affidavits from family and friends, and articles explaining country conditions in Mexico. The Director stated that the Applicant's unfavorable factors were his multiple entries into the United States without being admitted, his periods of unauthorized stay, and the lack of documentation showing he had been living in Mexico for 10 years. We find that the Director erred in concluding that the Applicant did not merit a favorable exercise of discretion. The Director did not consider all of the Applicant's favorable factors that were in the record and incorrectly listed one unfavorable factor. Specifically, the Director did not list as favorable factors the Applicant's two U.S. citizen children (ages 11 and 15), the hardship his children would experience without him or if they relocated to Mexico, his lack of a criminal record, his approved Form I-130, Petition for Alien Relative (Form I-130), and his gainful employment in Mexico. The Director listed the lack of documentation showing the Applicant has lived in Mexico for 10 years as an unfavorable factor. The reason for listing this as an unfavorable factor is not clear as it was already determined that he has remained outside of the United States for 10 years. Regardless, the Applicant previously submitted multiple statements and letters establishing his residence in Mexico since he departed the United States in 2011. For instance, the Applicant's current employer in Mexico states that he has been working with him since November 2017 as an assistant mechanic, and his former employer in Mexico mentions that he worked with him from February 2012 until October 2017. A friend in Mexico also states that he saw him there in 2011. Upon considering and weighing all of the Applicant's favorable and unfavorable factors, as discussed below, the Applicant has established that he merits a favorable exercise of discretion.

The Applicant's favorable factors include his U.S. citizen spouse of nearly 14 years; his two U.S. citizen children; his approved Form I-130; hardship his spouse, children, and spouse's lawful permanent resident father, who resides with his spouse and has kidney disease, would experience without him or if they relocated to Mexico; his lack of a criminal record; his gainful employment in Mexico; and statements in support of his good character, which describe him as a responsible and good person.[2] Regarding hardship, the Applicant's spouse details the emotional, financial, and psychological hardship their family has experienced without the Applicant, and her difficulties associated with raising their two children without him. The Applicant's spouse states that she is currently experiencing exhaustion working at a magnetic inspection laboratory, taking care of the household chores, cooking, taking care of her father, and helping her children with their homework. She states that the Applicant would help shoulder the burden of these day-to-day duties. She mentions that her daughter is bullied at school because the Applicant lives in Mexico. The Applicant's spouse also describes feeling hopeless and the positive impact on her mental health if the Applicant was in the United States. The Applicant's spouse's psychological evaluation reflects that she was diagnosed with separation anxiety disorder and adjustment disorder with mixed anxiety and depressed mood.

[1] Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that they are competent to translate from the foreign language into English. *Id.*

[2] The Director listed the Applicant's mother's "medical records" as a favorable factor. However, the record does not establish how her medical records alone result in a favorable factor.

Regarding financial hardship, the Applicant's spouse mentions that the Applicant earns enough in Mexico to cover his basic needs, but she had to send him $1,120 to repair his collapsed home roof. She provides a list her monthly expenses and states that the Applicant working in the United States would help financially. The Applicant's spouse then describes the emotional, financial, and educational hardship their family would experience in Mexico, along with safety concerns upon relocation there. Specifically, she mentions that she would experience anxiety worrying about their children being in an unsafe environment, she and the Applicant could not support their family based on the low wages in Mexico, and their children would have better educational opportunities in the United States. The record includes several articles related to safety and educational issues in Mexico which support the Applicant's claims.

The Applicant's unfavorable factors include his three entries into the United States without being admitted and his associated periods of unauthorized presence in the United States. When considering the totality of the Applicant's favorable factors, we determine that they outweigh his unfavorable factors, and he merits a favorable exercise of discretion. We hereby withdraw the Director's decision and sustain the appeal.

ORDER: The appeal is sustained.