



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

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

In Re: 29095267

Date: DEC. 5, 2023

Motion on Administrative Appeals 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 China, seeks conditional approval of his application for 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); 8 C.F.R. § 212.2(j).

The Director of the Los Angeles, California 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. We dismissed a subsequent appeal and motion to reopen and reconsider. The matter is now before us on combined motions to reopen and reconsider.

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). Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

As previously discussed, 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 is warranted as a matter of discretion. *Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978).

II. ANALYSIS

In our previous decision on the Applicant's motion, which we incorporate here by reference, we acknowledged the submission of supplemental evidence, but determined the record still did not establish that the Applicant's favorable factors outweighed his unfavorable ones, and therefore he did not merit a favorable exercise of discretion.¹ We noted that the additional documentation was consistent with the Applicant's previous claims of employment as a ballet dance teacher and accomplishments as a dancer, both of which we recognized as favorable considerations, but they came into existence after he had been ordered removed from the United States. Therefore, we gave the updated evidence related to the Applicant's employment as a dance teacher and accomplishments as a dancer diminished weight in the discretionary analysis. We also acknowledged the articles describing incidents of hostility by Chinese authorities towards foreign nationals, including citizens of the United States; however, we determined that the record did not establish that the Chinese government would treat the Applicant differently than any other Chinese citizen if he remained in China for the entire inadmissibility period. Furthermore, we mentioned that the Applicant did not explain the specific hardships his spouse would experience if she relocated to China with him.

We concluded that the Applicant did not establish new facts sufficient to warrant reopening of the proceedings, nor did he demonstrate that our prior decision on his appeal was based on an incorrect application of law or policy or that it was otherwise incorrect based on the evidence in the record of proceedings at the time of the decision.

On motion, the Applicant requests that we consider new evidence in order to favorably adjudicate his case. The Applicant submits a physician's statement for his spouse, a statement from his spouse, a statement from his father, a subpoena from China, a certificate of appreciation, a 2022 tax return, and photographs of him with his ballet students. We will address the new evidence in turn. First, the physician's statement reflects that the physician inquired about the Applicant's spouse's medical history and current issues, listed diagnoses of anxiety and depression, and advised her to continue to take prozac and sleeping medication. We note that the physician's statement is very brief, and it does not indicate how long the physician has been treating the Applicant's spouse, how long she has had these issues, and her prognosis. Furthermore, the physician states that the Applicant's "physicals are not remarkable other than appearing some [sic] anxious." Based on the above, the physician's statement provides minimal weight in relation to the Applicant's spouse's hardship.

¹ In our previous decision on the Applicant's appeal, which we also incorporate here by reference, we recognized the favorable factors in the Applicant's case, including his lawful entry as a nonimmigrant visitor in 2011, longtime residence in the United States, apparent lack of criminal history, 2013-2014 employment with the [redacted] work as a dance teacher at a performing arts foundation in California, and marriage to a U.S. citizen. Nevertheless, we concluded that the weight of his favorable factors was diminished by the fact that the Applicant did not comply with his removal order, his residence and employment in the United States were unauthorized, and his marriage occurred in 2016, after he had been ordered removed from the United States. We also determined that an Immigration Judge's adverse finding in asylum proceedings concerning the Applicant's credibility, as well as unresolved inconsistencies in the record concerning the merits of his asylum claim were additional unfavorable factors that weighed against him. Lastly, although the Applicant claimed that his spouse would experience hardship if she were to follow him to China, we explained that because he did not provide specific details or supporting documentation, he did not show that hardship to his spouse was a significant factor weighing in his favor.

Next, we note the Applicant's spouse's statement which details her emotional closeness to the Applicant; activities she does with him; inability to sleep, hair loss and depression due to worrying about him; long-term effects of medication she is taking; and her inability to care for her mother if she relocates to China. While we acknowledge the difficulty the Applicant's spouse would experience, the hardship she describes is an after-acquired equity and therefore given diminished weight. Additionally, the record does not include supporting evidence that the Applicant's spouse cares for her mother.

The Applicant contends that the articles he submitted previously about China were meant to show the difficulty his spouse would experience in China. The Applicant's spouse details safety issues upon moving to China for her and the Applicant. While the Applicant has not established his spouse would experience safety issues in China, the record indicates she would experience general hardship upon moving to a foreign country. Next, the Applicant submits a statement from his father and a subpoena from China reflecting the Applicant must report to the police station due to an investigation of his violation of public safety laws, and he will be arrested for not reporting. The subpoena is three sentences long and only says "To [the Applicant]." It does not list an address for him or any other identifying information. The subpoena references investigating the Applicant for violating public safety laws, but it does not list the specific laws or any legal sections. It references reporting to the [REDACTED] Branch of the "public safety policy station." However, it gives no address for this station. Due to these issues, we give the letter minimal weight. We note the certificate of appreciation from the North American CPA Association, 2022 tax return, and picture of the Applicant with his students. The Applicant asserts that his service to the ballet dance community and members of the Chinese CPA Association should be given full weight. Again, the Applicant's work was not with authorization and many years of it was after he was ordered removed, therefore we will continue to give it diminished weight.

The evidence submitted on motion is not sufficient to establish that he now merits a favorable exercise of discretion. Therefore, he has not met the requirements for a motion to reopen. Furthermore, the Applicant has not established that our prior decision was based on an incorrect application of law or policy. Therefore, he has not met the requirements for a motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.