U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28768505

Date: NOVEMBER 1, 2023

Appeal of U.S. Customs and Border Protection Decision

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

The Applicant seeks advance 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). She has filed a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, seeking permission to reapply for admission under Section 212(a)(9)(A)(iii) of the Act.

The Director of the U.S. Customs and Border Protection (CBP) Admissibility Review Office (Director) denied the Applicant's Form I-212, Application for Permission to Reapply for Admission, as a matter of discretion, concluding that the favorable factors in his case were outweighed by the unfavorable factors. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant asserts that the Director erred by not giving sufficient weight to the positive factors in his case that warrant a favorable exercise of discretion.

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 foreign national, 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 the 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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of a noncitizen convicted of an aggravated felony) 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. 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, 371 (Reg'l Comm'r 1973).

II. ANALYSIS

The issue presented on appeal is whether the Applicant, a native of Iran and citizen of Canada, should be granted permission to reapply for admission to the United States in the exercise of discretion. The Applicant does not contest the Director's finding that he is inadmissible under section 212(a)(9)(A) of the Act. This finding is supported by the record, which reflects that the Applicant was expeditiously removed from the United States in 2022.[1] We have considered all the evidence in the record and conclude that the Applicant does not merit a favorable exercise of discretion.

As stated above, we must weigh any unfavorable factors against the favorable factors to determine if approval of the application is warranted as a matter of discretion. In the present case, the favorable factors for the Applicant are his family ties in the United States, particularly his daughter and lawful permanent resident son. Despite the presence of these factors, the record does not contain any detailed information or evidence demonstrating the extent of the Applicant's ties to his community, his moral character, or his employment record.[2] Furthermore, the record does not contain any statement from the Applicant's family members regarding how the denial of the Applicant's application would affect them.[3]

The Director identified the Applicant's unfavorable factors as the recency of his removal, and the fact that, in 2017 and 2021, the Applicant was allowed to withdraw his application for admission to the United States after being found inadmissible under section 212(a)(7)(A)(i)(I) of the Act as an immigrant without a valid entry document, the same ground for which he was ultimately removed.[4]

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[1] In January 2022, the Applicant applied for admission to the United States and indicated that he intended to visit his daughter in New York for one week. During secondary inspection, CBP discovered several applications for employment in the United States on the Applicant's cellphone. In his sworn statement, the Applicant indicated that he was not employed in Canada, did not own property in Canada, and that his two children resided in the United States. CBP determined that the Applicant was inadmissible to the United States under section 212(a)(7)(A)(i)(I) of the Act as an immigrant without a valid entry document.

[2] We note here that the Applicant submitted two reference letters from former coworkers; however, the letters are brief and do not provide a complete picture of his employment history.

[3] While the Applicant indicated that he intended to submit a full brief, we have not received any additional documentation.

[4] In June 2017, the Applicant applied for admission and indicated that he was traveling to the United States to explore potential business opportunities. During secondary inspection, he was unclear about his employent status, unsure of how long he intended to stay in the United States, and was in possession of a one-way ticket. CBP determined that the Applicant was inadmissible to the United States under section 212(a)(7)(A)(i)(I) of the Act as an immigrant without a valid entry document, and he was allowed to withdraw his application for admission. In May 2021, the Applicant again applied for

After reviewing the entirety of the record and the totality of circumstances, the Applicant has not met his burden of demonstrating that he merits a favorable exercise of discretion. Specifically, the Applicant is 67 years old and he did not provide information that describes in any detail his activities, employment, or conduct during his residency in Canada or evidence regarding any hardship his family members may experience if he is denied admission to the United States. As a result, the evidence in the record concerning the Applicant's family ties and other factors is insufficient to outweigh the unfavorable factors, notably his recent removal and repeated attempts to enter the United States as an immigrant without valid documentation. Accordingly, the application remains denied.

ORDER: The appeal is dismissed.

admission to the United States. During secondary inspection, the Applicant indicated that both of his adult children lived in the United States. In addition, a search of the Applicant's belongings revealed that he had a bag full of personal documentation, including identification documents, financial documents, diplomas, photo albums, and a resume. CBP determined that the Applicant was inadmissible to the United States under section 212(a)(7)(A)(i)(I) of the Act, and he was allowed to withdraw his application for admission.