U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27929588

Date: OCT. 20, 2023

Appeal of Hartford, Connecticut Field Office Decision

Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal

The Applicant, who intends to request an immigrant visa abroad, 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), because she will become inadmissible upon departing from the United States for having been previously ordered removed. Permission to reapply for admission is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services may grant in the exercise of discretion.

The Director of the Hartford, Connecticut Field Office denied the application, concluding that no purpose would be served in granting conditional approval for permission to reapply for admission as the Applicant, upon her departure, would also become inadmissible under section 212(a)(6)(B) of the Act for failure to appear at her removal proceedings. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

Section 212(a)(6)(B) of the Act provides that any noncitizen who, without reasonable cause, fails to attend or remain in attendance at a proceeding to determine the noncitizen's inadmissibility or deportability, and who seeks admission to the United States within five years of the noncitizen's subsequent departure or removal, is inadmissible. There is no waiver for this inadmissibility.

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 Applicant is currently in the United States and seeks permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before departing the United States.[1] Because she has an outstanding order of removal, she will be inadmissible under section 212(a)(9)(A)(ii) of the Act once she departs.[2]

The Director determined that upon departure, the Applicant will also become inadmissible for five years under section 212(a)(6)(B) of the Act due to her failure to appear at her removal hearing, an inadmissibility for which no waiver is available, and she did not establish a reasonable cause for failing to attend the hearing. Therefore, the Director denied the Form I-212, concluding that no purpose would be served in approving the application as the Applicant would remain inadmissible.

On appeal, the Applicant asserts that she has demonstrated a reasonable cause for her failure to attend her removal hearing and provides an updated personal statement. She notes that she was 17 years old, did not understand English, and relied upon her sister to make arrangements for her release to the custody of a non-relative. The Applicant indicates that the non-relative dropped her off in [redacted] soon after retrieving her from the airport and never returned her paperwork or notified her of court dates.

In this case, the Applicant does not contest that she will be inadmissible under section 212(a)(9)(A)(ii) of the Act upon her departure from the United States. With respect to inadmissibility under section 212(a)(6)(B) of the Act, we need not determine at this time whether the Applicant has demonstrated a reasonable cause for her failure to attend her removal proceedings. The record reflects that in 2010, the

[1] The approval of the Form I-212 under those circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if she does not depart.

[2] The record indicates that on November 25, 2008, the Applicant, who was 17 years old, was apprehended, detained, and placed into removal proceedings upon attempting to enter the United States without inspection. She was released from detention into the custody of a non-relative on January 21, 2009. She did not attend her removal hearing on [redacted] 2009, and was ordered removed *in absentia* by an immigration judge on that date. The Applicant did not depart and continues to reside in the United States with her lawful permanent resident spouse and four U.S. citizen children.

Applicant married her lawful permanent resident spouse, who then filed a Form I-130, Petition for Alien Relative, on her behalf which was approved in 2021, and she intends to apply for an immigrant visa abroad. Accordingly, the U.S. Department of State will make the final determination concerning the Applicant's eligibility for a visa, including whether she is inadmissible under section 212(a)(6)(B) of the Act or under any other ground.

As stated above, when considering whether a request for permission to reapply merits a favorable exercise of discretion, favorable factors may include hardship to the applicant and other U.S. citizen or lawful permanent resident relatives as well as the applicant's moral character, respect for law and order, and family responsibilities. In addition, although immigration violations may be considered as negative factors in a discretionary determination, they must be weighed against the favorable factors presented as well as with other negative factors. We also note that while favorable factors ("equities") acquired after an order of deportation, exclusion, or removal has been entered may be given less weight in assessing favorable factors in the exercise of discretion, they should not be dismissed as such, and they must still be considered and balanced against the adverse factors in the totality of circumstances. *See Garcia-Lopez v. INS*, 923 F.2d 72, 74 (7th Cir. 1991) (noting that less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (noting that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408, 416 (BIA 1998), need not be accorded great weight by the director in a discretionary determination). Thus, depending on the specific facts, such as the length of time since the removal order, or the number and strength of the equities (e.g., longstanding demonstration of good moral character, family ties, contributions to the community, business ownership, etc.) after-acquired equities may be sufficient to outweigh the unfavorable factors. *Garcia-Lopez v. INS*, 923 F.2d at 76; *Matter of Tijam*, 22 I&N Dec. at 417.

Here, the Director denied the Form I-212 based on the Applicant's potential inadmissibility and did not review and weigh all positive and negative factors with consideration to all evidence presented. In light of the foregoing, we find it appropriate to remand the matter to the Director to reevaluate the submitted evidence, including that submitted on appeal, and determine whether the Applicant warrants a favorable exercise of discretion.

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