U.S. Citizenship and Immigration Services

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

In Re: 35086321

Date: DEC. 13, 2024

Appeal of Newark, New Jersey Field Office Decision

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

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), because he 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 Newark, New Jersey Field Office denied the application as a matter of discretion, concluding the favorable factors did not outweigh the unfavorable factors in the case. The matter is now before us on appeal pursuant to 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 Applicant is currently in the United States and seeks conditional permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before he departs.[1] He does not contest that he will become inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure for having been previously ordered removed. The only issue on appeal is whether the Applicant has demonstrated that approval of his Form I-212 is warranted as a matter of discretion.

The Applicant, a citizen of El Salvador, indicated he entered the United States without inspection in 2012. The record reflects that between 2013 and 2018 his criminal history included four arrests with two subsequent guilty pleas for disorderly conduct and underage drinking. In 2020, the Applicant was arrested for "Aggravated Assault – Strangle Domestic Violence Victim"; entered a guilty plea and was convicted for the amended charge of "Simple Assault – Purposely/Knowingly Causing Bodily Injury"; sentenced to 306 days of time served; and ordered to pay associated fines and fees. He was placed in removal proceedings and an Immigration Judge issued an order of removal in 2021. The Board of Immigration Appeals (the Board) dismissed the Applicant's appeal; the United States Court of Appeals for the Third Circuit denied his petition for review of the Board's order in in 2022; and a Warrant of Removal/Deportation was issued for the Applicant. The Applicant did not leave and has been residing in the United States since that time.

In support of the Form I-212, the Applicant submitted a personal affidavit; affidavits from the mother of his U.S. citizen child from a previous relationship, his U.S. citizen spouse, whom he married in 2021, his spouse's U.S. citizen mother and brother, and his friend; medical, financial, and biographic documentation; and criminal history information. The Applicant indicates he provides financial assistance to the mother of his child from a previous relationship and maintains a strong bond with his daughter; emotionally supports his spouse and stepchild; contributes to rent and other living expenses for his family; and assists his spouse in caring for her mother, who lives with them. The Applicant fears that he will not be able to continue providing emotional and financial support to his family if he is deported to El Salvador and he is concerned about returning to the violence in his home country that he escaped as a teenager. His spouse notes that if the Applicant is deported, she will not be able to go back to school and study criminal justice; she relies on him to provide financial and emotional support to her and her mother, who suffers from depression and memory loss; and he plays an important role in her child's life and has become a father to her.

In denying the application, the Director acknowledged there were favorable considerations in the Applicant's case, including his family ties in the United States, specifically his U.S. citizen spouse,

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

child, and stepchild; history of paying taxes; country conditions in El Salvador; and the Applicant's entry into the United States as a minor. The Director determined that these favorable factors were insufficient to overcome the unfavorable factors of the Applicant's non-compliance with the removal order and criminal history.

On appeal, the Applicant contends that the Director failed to appropriately consider and weigh the submitted evidence. He asserts that the Director erred by not considering hardship the Applicant or his stepdaughter would experience and did not accord his spouse's anxiety disorder sufficient weight. Upon review, the Director appropriately applied *Matter of Tin* and *Matter of Lee* to conclude that the record did not establish the favorable factors, which include hardship to the applicant and U.S. citizen family members, outweigh the unfavorable factors such that approval of the application is warranted as a matter of discretion.

The evidence considered in its totality is insufficient to show the extent of the claimed emotional, financial, or medical hardship to the Applicant, his spouse and her mother, his stepchild, and his child from a previous relationship, that would result if the application were denied. Moreover, the record does not demonstrate they would lack emotional, financial, or medical support from other family members in the United States. We recognize that the Applicant's spouse was diagnosed with adjustment disorder with anxiety and may face emotional difficulties without the Applicant; however, the record does not suggest that her mother, who lives with the spouse, or her brother, who lives in the same town, would be unwilling or unable to provide her with emotional support. In addition, the Applicant has not demonstrated that his spouse would be unable to obtain care from a professional should she need psychological assistance. Regarding the potential financial hardship, the submitted documentation does not sufficiently demonstrate the Applicant's monetary support to his family or reflect regular expenses and financial obligations. Further, the record reflects that the Applicant's spouse is employed full-time as an administrative assistant.

We recognize the favorable factors in the Applicant's case, including his family ties in the United States, the emotional and financial support he provides his family, and the hardship he and his family would experience as a result of separation. However, the record also contains unfavorable factors, such as the Applicant's criminal history, unlawful presence and unauthorized employment, and his non-compliance with the removal order. The Applicant's lengthy criminal history is a significant unfavorable factor, especially in light of his 2021 conviction for Simple Assault – Purposely/Knowingly Causing Bodily Injury. As noted by the Director, though the Applicant and his spouse indicated in their affidavits that the arrest was the result of a misunderstanding, the record reflects that a condition of the Applicant's release from custody was to avoid contact with the victim, his spouse. While the Applicant's prolonged absence from the United States may have a negative impact on him and his family, he has not demonstrated that the claimed hardships, as well as other positive considerations, outweigh the unfavorable factors in his case.

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.