U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29963511

Date: NOV. 25, 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, a native and citizen of Costa Rica, will be inadmissible upon her departure from the United States for having been previously ordered deported and seeks 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).

The Director of the Newark, New Jersey Field Office denied the application, concluding that the record, upon weighing negative factors and positive equities, did not establish that the application should be approved in the exercise of discretion. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Applicant argues the Director conducted only a limited review of her equities and negative factors, giving insufficient weight to the positive equities. 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)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), provides that any "arriving alien . . . who has been ordered removed under section 235(b)(1) [of the Act, 8 U.S.C. § 1225(b)(1),] or at the end of proceedings under section 240 [of the Act, 8 U.S.C. § 1229a,] initiated upon the arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible."

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). 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 (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.")

Generally, favorable factors that came into existence after a noncitizen has been ordered deported or removed from the United States ("after-acquired equities") are given less weight in a discretionary determination. *See Garcia-Lopes v. INS*, 923 F.2d 72, 74 (7th Cir. 1991) (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) (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).

The Applicant currently resides in the United States and is seeking conditional approval of the application under the regulation at 8 C.F.R. § 212.2(j) before she departs, as she will be inadmissible upon her departure due to her 1997 deportation order. The approval of the application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if she fails to depart.

Section 212(a)(6)(B) of the Act renders inadmissible 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 such noncitizen's subsequent departure or removal. There is no waiver available for this ground of inadmissibility.

II. ANALYSIS

The record indicates that the Applicant entered the United States without inspection, authorization, or parole in 2004. That same year, the Applicant was placed into removal proceedings, and when she failed to appear for a hearing, the Applicant was ordered removed *in absentia*. *See* section 240(b)(5)(A) of the Act, 8 U.S.C. § 1229a(b)(5)(A) (stating that any individual who does not attend a required hearing "shall be ordered removed in absentia if [the Department of Homeland Security (DHS)] establishes by clear, unequivocal, and convincing evidence that . . . written notice was . . . provided and that the [individual] is removable"). The Applicant contends she has not departed the United States since her initial entry.

The Applicant filed the instant Form I-212, Application for Permission to Reapply for Admission (Form I-212), in January 2023, seeking conditional approval of the application prior to her departure from the United States under 8 C.F.R. § 212.2(j) (enabling an applicant whose departure will execute an order of removal to seek conditional approval depending upon their "satisfactory departure"). The Director denied the application, concluding that the Applicant was inadmissible under section 212(a)(9)(A)(ii) of the Act and did not establish that a favorable exercise of discretion was warranted in her case. In the denial, the Director cited the Applicant's failure to attend her removal hearing in 2004, concluding that this violation of U.S. immigration laws and failure to comply with the order from the Immigration Judge weighed against approval of her permission to reapply for admission. The

Director further determined that the Applicant previously departed the United States after the entry of her removal order, resulting in the execution of that order and rendering her inadmissible under section 212(a)(6)(B) of the Act, for failing to attend her removal proceedings.[1] The Director then considered all the factors in the Applicant's case and concluded that the favorable factors in the case[2] did not outweigh the adverse factors.[3]

The issue on appeal is whether the Applicant should be granted conditional approval of her application for permission to reapply in the exercise of discretion. We find that no purpose would be served in approving her Form I-212, as the record indicates that she would become inadmissible upon departure from the United States pursuant to section 212(a)(6)(B) of the Act, a ground for which no waiver is available.

Based upon the evidence provided, the Applicant has not demonstrated that she had reasonable cause for not attending her removal hearing. There is no statutory definition of the term "reasonable cause" as it is used in section 212(a)(6)(B) of the Act, but guiding U.S. Citizenship and Immigration Services (USCIS) policy provides that "it is something not within the reasonable control of the [applicant]."[4] While the Applicant asserts that she lacked the financial resources to travel to her hearing and the legal guidance to change venue of her proceedings, these are not circumstances not within her reasonable control that would prevent her from attending his hearing. Rather, the record indicates that, prior to her release on recognizance, the Applicant was served with and signed a Notice to Appear advising her: "if you fail to attend the hearing at the time and place designated on this notice, . . . a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS." Based upon the evidence provided, the Applicant has not demonstrated she had reasonable cause to not attend her removal hearing.

While we acknowledge the Applicant's arguments on appeal, the record reflects that she was ordered removed *in absentia* in 2004 and has not shown reasonable cause for her failure to appear for her removal hearing. An application for permission to reapply for admission is denied, in the exercise of discretion, to a noncitizen who is mandatorily inadmissible to the United States under another section of the Act. *Matter of Martinez-Torres,* 10 I&N Dec. at 776-77 . Approving the Form I-212 would serve no purpose as the record indicates that the Applicant will become inadmissible under section 212(a)(6)(B) of the Act upon her departure and remain inadmissible for a period of five years.

As the record indicates that the Applicant will become inadmissible upon her departure under section

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[1] The Applicant contends that she has not executed her removal order by departing the United States after being ordered removed. The Applicant further contends that she failed to appear for her hearing because she "did not have enough money to pay for the transportation and accommodation involved in appearing in court." She likewise "did not have the money to hire the services of an immigration attorney to represent [her]." She also stated she "was not aware that [she] could move [her] court to the state of New Jersey" from New York.

[2] The Director acknowledged two favorable factors in the Applicant's case: her marriage to a U.S. citizen and her spouse's cancer diagnosis.

[3] Regarding adverse factors, the Director referenced the Applicant's illegal entry into the United States, her failure to appear at her deportation hearing and resulting removal order, and her presence in the United States without lawful status.

[4] Memorandum from Lori Scialabba, Associate Director for Refugee, Asylum & International Operations Directorate, et al., USCIS, HQ 70/21.1 AD07-18, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators: Revisions to the Adjudicator's Field Manual (*AFM*) to Include a New Chapter 40.6* (AFM Update AD07-18) (Mar. 3, 2009).

212(a)(6)(B) of the Act, and there is no waiver available for this ground of inadmissibility, her application for permission to reapply for admission will remain denied as a matter of discretion.

ORDER: The appeal is dismissed.