U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35685040

Date: JAN. 29, 2025

Appeal of New York, New York Field Office Decision

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

The Applicant 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), for having been previously ordered removed. Permission to reapply for admission is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion.

The Director of the New York, New York Field Office denied the application as a matter of discretion, concluding that 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

According to the Applicant's statement submitted with his Form I-212, he entered the United States in 1993 with a fraudulently obtained passport, filed an asylum application using someone else's name, and was ordered removed *in absentia* in 1999. In 2005, the Applicant traveled to Bangladesh with Advance Parole based on the Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, which he filed under his real name. The Applicant married his U.S. citizen spouse in 2009. She filed a Form I-130, Petition for Alien Relative, on his behalf and it was approved in 2012. The Applicant filed a Motion to Reopen his removal proceedings, which the Immigration Judge denied in 2016, noting that the Applicant's 2005 departure from the United States conferred jurisdiction to USCIS. The Applicant subsequently filed his Form I-485, Application to Register Permanent Residence or Adjust Status; Form I-601, Application for Waiver of Grounds of Inadmissibility, which was approved in 2018; and the instant Form I-212.

In support of the Form I-212, the submitted evidence includes the Applicant's and his spouse's affidavits and letters from their doctor, a list of the Applicant's medications, and medical discharge instructions for the Applicant. The Director acknowledged there were favorable considerations in the Applicant's case, including the claimed emotional, medical, and financial hardship to the Applicant and his spouse. The Director determined, however, that these favorable factors were insufficient to overcome the unfavorable factors of the Applicant's unlawful presence, previous removal order, and inadmissibility for fraud or willfully misrepresenting a material fact based on his use of a fraudulently obtained passport to enter the United States. The Director further found that the Applicant did not submit sufficient evidence to demonstrate the claimed hardship to the Applicant and his spouse. The Director noted that the submitted affidavits indicate the Applicant's spouse suffers from major depressive disorder, anxiety, and stress; her stress worsens her health condition; and she relies on the Applicant's financial support because she can only work part-time due to her medical condition. However, the submitted evidence, specifically a letter from his spouse's doctor that noted her depression, anxiety, and stress, and indicated she was referred to a psychiatrist, was insufficient to demonstrate his spouse's claimed hardship. In addition, the denial noted that the Applicant did not submit supporting documentation to demonstrate financial hardship, such as proof of prior or current earnings, or other relevant evidence. The Director concluded that the unfavorable factors did not outweigh the favorable factors, which were acquired after the 1999 removal order.[1]

[1] Equities that came into existence after an individual has been ordered removed from the United States ("after-acquired equities"), including family ties, have diminished weight for purposes of assessing favorable factors in the exercise of discretion. *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); *Camalla-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).

On appeal, the Applicant asserts the Director did not take into account the totality of the discretionary factors, including the 2018 approval of his Form I-601 based on his spouse's claimed hardship, and did not fully consider claimed hardship to the Applicant. He also contends that the Director incorrectly analyzed the facts of his case, such as referring to claimed hardship to his children though he does not have children and addressing information in the Applicant's letter from his doctor when discussing his spouse's doctor's letter. The Applicant submits additional medical documentation on appeal, such as a list of medications for the Applicant and his spouse and information about their respective medical history.

Upon review, the record supports the Director's conclusion that the evidence does not establish the favorable factors outweigh the unfavorable factors such that approval of the application is warranted as a matter of discretion. While the Applicant's prolonged absence from the United States may have a negative impact on him and his spouse, he has not demonstrated that the claimed hardships to himself and his spouse, as well as other positive considerations, outweigh the unfavorable factors in his case. We note that although the submitted affidavits and the doctor's letter indicate the Applicant's spouse suffers from major depressive disorder, anxiety, and stress, and she was given a psychiatry referral, the record lacks evidence to establish she has obtained psychiatric treatment or would be unable to obtain treatment or medication in the Applicant's absence. Regarding the Applicant's claimed hardship, while the submitted evidence indicates he has a history of ailments, such as anemia, gastritis, and prediabetes, the record lacks sufficient documentation to demonstrate he would be unable to obtain appropriate treatments if his Form I-212 is denied. We acknowledge the Applicant's claim that he is the primary wage earner and that his spouse will experience financial hardship without his income, but the evidence is insufficient to show the extent of this hardship. The Applicant has not submitted financial documentation, with the Form I-212 or on appeal, that demonstrates the Applicant's and his spouse's income or regular household bills and expenses. The record lacks evidence to show that his spouse would be unable to maintain employment or otherwise supplement her income in the Applicant's absence.

The evidence considered in its totality is insufficient to show the extent of the claimed medical, emotional, or financial hardship to the Applicant and his spouse that would result if the Form I-212 is denied. We recognize the favorable factors in the Applicant's case, including his family ties in the United States, apparent lack of a criminal record, and the hardship he and his spouse will experience as a result of separation. However, the record also contains significant unfavorable factors, such as the Applicant's unlawful presence and inadmissibility for fraud or willfully misrepresenting a material fact based on his use of a fraudulently obtained passport to enter the United States. 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.