U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22044250

Date: AUG. 26, 2022

Appeal of Omaha, Nebraska Field Office Decision

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

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.[1] Permission to reapply for admission to the United States 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 Omaha, Nebraska Field Office denied the application, concluding that the Applicant did not establish that a favorable exercise of discretion was warranted in his case.[2] On appeal, the Applicant contends that the Director's decision was conclusory and did not fully address the evidence on record.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, as explained below, we will remand the matter to the Director for the entry of a new decision.

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

[1] The record reflects that on [redacted] 2006, the Applicant was ordered removed by an immigration judge in Kansas City, Missouri. He failed to report for deportation and has remained in the United States since that time.

[2] The Applicant will also become inadmissible for unlawful presence upon his departure to apply for an immigrant visa. He may file a provisional waiver application (Form I-601A, Application for Provisional Unlawful Presence Waiver), a separate application for relief, to waive his inadmissibility for unlawful presence and reenter the United States. *See* section 212(a)(9)(B)(v) of the Act. Pursuant to the regulation at 8 C.F.R. § 212.7(e)(4)(iv), an individual inadmissible under section 212(a)(9)(A) of the Act for having been ordered removed must obtain permission to reapply for admission before applying for a provisional waiver. *See* Instructions for Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, https://www.uscis.gov/i-212.

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).

The Director acknowledged the Applicant's favorable factors, including his U.S. citizen spouse and children, lawful permanent resident (LPR) parents, the emotional and financial hardship his family would face if the application is not granted, and an approved Form I-130, Petition for Alien Relative. The Director stated that the unfavorable factors are the Applicant's more than 20 years of unlawful presence in the United States and outstanding removal order issued by an immigration judge. The Director denied the application, concluding that the negative equities outweighed the positive factors in the Applicant's case.

On appeal, the Applicant contends that the Director erred by failing to consider all of the favorable factors in his case including the emotional and financial hardship his family would face if his application is denied. He further contends that the Director erred in not issuing an RFE or NOID prior to denying his application.

The Director determined that the Applicant's evidence of emotional and financial hardship "appear[ed]to be that which would normally be expected when one's relative is removed from the United States," but did not evaluate the evidence submitted with the application or explain the specific reason(s) for this conclusion. The Director also determined that the Applicant was not listed on his youngest daughter's birth certificate and that his parents frequently travelled to El Salvador. However, the decision did not address to what extent these facts diminished the emotional, financial hardship to his daughter or the medical hardship to his parents.

The record indicates that the Applicant met his spouse in 2000, and they married in 2017. The Applicant and his spouse have two children born in 2006 and 2010. The Applicant contends that his spouse and children will experience financial and emotional hardship if he is not allowed to remain in the United States. The Applicant states that his parents are elderly and sick, and rely on him for some of their daily activities. In their own letters, the Applicant's LPR parents confirm that they suffer from a myriad of health problems and rely on the Applicant to pick up their medications and take them to doctor's appointments. He claims that although his spouse works fulltime, she would have a hard time managing the household expenses by herself if he is not allowed to remain in the United States. The Applicant's spouse states that she and the Applicant have weathered many challenges due to the Applicant's strong work ethic and commitment to his family. She further states that the Applicant has always been and continues to be a loving father and stable provider for her and their children. She maintains that she cannot imagine the stress of working fulltime and caring for two minor children, one of whom has an intellectual disability without the Applicant's support.

Upon review, we agree that the Director did not adequately consider and weigh the submitted evidence. We note that the Applicant submitted approximately 500 pages of evidence, including earnings statements and federal tax returns for his construction business, mortgage statements, household bills, educational records for his daughter, and medical records for his spouse and parents. The Applicant also submits additional evidence on appeal of family ties and hardship, including a copy of the permanent resident cards and naturalization results for several family members, updated educational and medical records for his daughter and parents, as well as an amended birth certificate for his youngest daughter listing himself as her father.

In light of the deficiencies noted above, we find it appropriate to remand the matter to the Director to evaluate the submitted evidence, as well as new evidence submitted on appeal, and consider whether the Applicant merits 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.