U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23135428

Date: NOV. 18, 2022

Appeal of Long Island, New York 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)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(ii). He is inadmissible based on entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year.

The Director of the Long Island, New York Field Office denied the application. The Director concluded that the Applicant had not shown that a favorable exercise of discretion is warranted.

The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and states that the Director relied on incorrect information when denying the Form I-212 application.

We review the questions raised 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 remand the matter for the entry of a new decision consistent with our analysis below.

I. LAW

The Applicant is seeking permission to reapply for admission to the United States. He has been found inadmissible for entering the United States without being admitted after having accrued unlawful presence in the United States for an aggregate period of more than one year.

Section 212(a)(9)(C)(i) of the Act provides that an alien who "has been unlawfully present in the United States for an aggregate period of more than one year . . . and who enters or attempts to reenter the United States without being admitted is inadmissible." Under section 212(a)(9)(C)(ii) of the Act, there is an exception for any "alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien'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. *See 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 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. *See Matter of Tin,* 14 I&N Dec. 371 (Reg'l Comm'r 1973); *see also Matter of Lee*, 17 I&N Dec. 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").

II. ANALYSIS

The record indicates, and the Applicant acknowledges, that the Applicant entered the United States without admission and was unlawfully present on at least four occasions: from the mid-to-late 1980s to early 1991; from around April 1991 to around December 1991; from around 1999 to December 2006; and from June 2007 to April 2008.

In July 1991, the Applicant was arrested in [redacted] New York, and charged with driving under the influence of alcohol and possession of a loaded firearm. He pled guilty to both offenses but left the United States before sentencing could occur. He was apprehended by U.S. Immigration and Customs Enforcement shortly after he re-entered the United States in 2007. Following his apprehension, the Applicant was sentenced for his 1991 conviction and served a one-year sentence. His time was reduced for time served and for good behavior. He was granted voluntary departure in lieu of removal, and he departed the United States on April 23, 2008. The Applicant stated that separation from his lawful permanent resident spouse since his 2008 return to El Salvador has been difficult for his spouse and for himself.

The Applicant's adult U.S. citizen son filed Form I-130, Immigrant Petition for Alien Relative, on the Applicant's behalf in 2018. The petition was approved in 2019, and forms the basis of the Applicant's current attempt to immigrate to the United States.

The Director denied the Form I-212 application, concluding that the Applicant had cited only one favorable discretionary factor, his U.S. citizen child. The Director determined that this favorable factor has diminished weight because the "child was born in 2001," and "is an after-acquired equity which [the Applicant] acquired while being in the United States without entry, inspection, or admission."

The Director also determined that the following unfavorable factors outweighed the one favorable factor:

- The Applicant's criminal record, which is discussed above;
- The Applicant listed only one period of unlawful presence on Form I-212 from 2007 to 2008, and "failed to disclose" earlier periods of unlawful presence; and
- The Applicant used a "false identity [and date of birth] when apprehended."

On appeal, the Applicant states that he did not have a child born in 2001. The record does not show how the Director arrived at the 2001 birth date stated in the denial notice. In his statement submitted with the Form I-212 applicant, the Applicant stated that he had four grown children; he did not specify their ages. Other materials in the record indicate that the Applicant's children were born in 1989, 1990, 1992, and 1995. The two oldest siblings are citizens of the United States.

We add that an "after-acquired equity" is one obtained after the entry of an order of deportation, exclusion, or removal. *See Garcia-Lopes v. INS*, 923 F.2d 72, 74 (7th Cir. 1991). In this case, the Director incorrectly used the term to refer to a birth that occurred while the Applicant was unlawfully present in the United States, but he was not under an order of deportation, exclusion, or removal.

The Director's description of the Applicant's family ties to the United States was incorrect. The Applicant cited four adult children and his spouse, whereas the Director asserted that the only claimed favorable factor was a single child born in 2001. It is not clear from the record how many of the Applicant's children are currently in the United States. Statements submitted in support of the application are vague and indirect on this point.

The Applicant also denies having provided a false name to immigration authorities. Documents in the record from the Applicant's 2007 apprehension consistently show the Applicant's real name and date of birth, and show no aliases apart from variations on the Applicant's true name. The record before us, therefore, does not directly document the Applicant's provision of a false name to immigration authorities.

The Form I-212 application in Part 2, line 9 instructed the Applicant to "list all the time periods during which [the Applicant was] unlawfully present in the United States." The form further states, "Begin with your most recent period of unlawful presence." The Applicant listed only one period of unlawful presence, from June 15, 2007 to April 23, 2008. Part 2, lines 12 and 13 of the application asked the Applicant to specify where and when he later attempted to unlawfully reenter the United States. The Applicant left those lines blank. The Director considered the omission of the Applicant's earlier periods of unlawful presence to be misrepresentation of the Applicant's activities.

We must note, however, that the Applicant completed a portion of the Form I-212 application that relates to a ground of inadmissibility that only applies based on re-entry, or attempted re-entry, after prior unlawful presence. Thus, the filing of the application was itself an admission of multiple such entries, or attempts, even if the information on the form was incomplete. The body of the form only provides space for one such period of unlawful presence. In his accompanying statement, the Applicant stated that his decision to "travel[] to the United States illegally" was "made in 1988," again at least implying violations before 2007.

Because the Applicant seeks a form of relief specifically predicated on multiple entries or attempts at such entries, we do not conclude that the Applicant sought to conceal those very entries.

III. CONCLUSION

The Director's analysis of favorable and unfavorable discretionary factors rested on several errors and unsupported assertions. The Director should give notice of, and cite specific sources for any

derogatory assertions such as the Applicant's claimed use of an assumed name at the time of his apprehension, and issue a new decision.

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