U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16384380

Date: APR. 20, 2022

Appeal of U.S. Customs and Border Protection Admissibility Review Office Decision

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

The Applicant[1] is inadmissible to the United States for having been previously ordered removed. *See* Section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He has filed a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, seeking permission to reapply for admission under Section 212(a)(9)(A)(iii) of the Act.

The Director of the U.S. Customs and Border Protection (CBP) Admissibility Review Office denied the Applicant's Form I-212 application, as a matter of discretion, concluding that "the favorable factors in [his] case [were] outweighed by the unfavorable factors."

On appeal, the Applicant asserts that the Director erred by not properly weighing the positive and negative factors in his case and maintains that he has established that he is eligible for the Form I-212 application.

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 the 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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of a noncitizen convicted of an aggravated felony) 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

[1] While the Applicant claims to be represented by an attorney, on appeal, he has not submitted a new, properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. As explained in our February 3, 2021, correspondence, which was sent to both the Applicant and the individual he identified as his attorney, we consider the Applicant to be self-represented, because the record lacks a new, properly executed Form G-28.

from foreign continuous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

Approval of a Form I-212 application 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 a Form I-212 application 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. *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").

Generally, favorable factors that came into existence after a noncitizen has been ordered removed from the United States 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).

II. ANALYSIS

In addition to his Form I-212, the Applicant submitted a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, to CBP seeking a waiver of his inadmissibility based on a crime involving moral turpitude conviction. *See* Section 212(a)(2)(A)(i)(I) of the Act. CBP denied the Form I-192 application and the Board of Immigration Appeals (the Board) dismissed the subsequent appeal.[2] As the Applicant is inadmissible to the United States under another section of the Act, no purpose would be served in granting the Form I-212 application in the exercise of discretion. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964). We will therefore dismiss his appeal of the denial of his Form I-212 application as a matter of discretion.

In the alternative, even if the Applicant's Form I-192 were granted, we would nonetheless dismiss the appeal of his Form I-212 application denial as a matter of discretion because he has not demonstrated that he merits such approval. The record establishes that the Applicant entered the United States as a K-1 nonimmigrant fiancé in August 1995 and subsequently adjusted status to that of a conditional permanent resident in October 1995. *See* Section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K). In [redacted] 1996, the Applicant was convicted of three counts of criminal sexual conduct in the fourth degree by force or coercion, in violation of Section 750.520e(1)(b) of the Michigan Penal Code, and he was sentenced to a two-year probation term. Section 750.520e(1)(b) of the Michigan Penal Code provides that "[a] person is guilty of criminal sexual conduct in the fourth degree if he or she

[2] The Applicant indicates that he has filed a motion to reconsider the matter with the Board.

engages in sexual contact with another person and if . . . [f]orce or coercion is used to accomplish the sexual contact." In [redacted] 1997, the Applicant was convicted of one count of criminal sexual conduct in the fourth degree by force or coercion, in violation of Section 750.520e(1)(b) of the Michigan Penal Code, and he sentenced to a one-year prison term. In [redacted] 1997, the Applicant was sentenced to a 93-day prison term for violating the terms of his two-year probation imposed for his [redacted] 1996 convictions.[3]

In [redacted] 1998, an immigration judge ordered the Applicant removed from the United States to Canada, his country of citizenship, for having been convicted of a crime involving moral turpitude, *see* Section 237(a)(2)(A)(i) of the Act, 8 U.S.C. § 1227(a)(2)(A)(i), and for having been convicted of an aggravated felony as defined in Section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). *See* Section 237(a)(2)(A)(iii) of the Act. After his removal, in [redacted] 2000, the Applicant was convicted of sexual assault, in violation of Section 271 of the Canadian Criminal Code, and he was sentenced to a 15-month conditional sentence order and a two-year probation term. While he states that he has received a pardon, the documents from the Canadian government specify that "a pardon does not erase the fact that an individual was convicted of an offence(s) and has a criminal record, or affect any prohibition order imposed under the Criminal Code of Canada."

According to the conviction record, which includes the Complaint and General Information, associated with the Applicant's [redacted] 1997 conviction, the Applicant "did engage in sexual contact with another person, to-wit: [the victim], using force or coercion to accomplish the sexual contact." The "Narrative Report" associated with this conviction states that the Applicant "walked past [the victim] and she felt a hand grab her right side buttock." Another "Narrative Report" associated with this conviction, which the Applicant signed in [redacted] 1996, states that "[a]s I passed [the victim,] I squeezed her buttocks." The Applicant has not submitted conviction records explaining the circumstances surrounding his other convictions, specifically as relating to his [redacted] 1996 convictions for three counts of criminal sexual conduct in the fourth degree by force or coercion, and his [redacted] 2000 conviction for sexual assault. The Applicant claims that such records are no longer available.

In an August 2019 statement, the Applicant stated that he "committed the offences . . . as a young adult between 25-27 years old," and acknowledged that "there are 5 separate convictions, [with] 3 of them . . . on a single date." He claimed that "[a]ll his offences occurred in the span of 2-3 years and all 5 offences were the same, where [he] inappropriately grabbed or pinched the buttocks of the [victims]" and that "[a]ll the incidents occurred at shopping malls in public." In an early statement, dated December 2017, the Applicant admitted that before these incidents that resulted in his convictions, "[b]etween the months of June and November 1995 there were 3 instances where [he] brushed the back of [his] hand against a women's buttocks" and that "[t]wo of these were while [he]

[3] The [redacted] 1997 "Judgment of Sentence Commitment to Jail" indicates that because the Applicant violated his terms of probation, he was sentenced to 31 days in jail for each of the three counts associated with the [redacted] 1996 convictions.

was living with [his] parents in [redacted] Ontario, and the other was within a few weeks after [his] wedding [to his first wife]." He was not prosecuted or convicted for these earlier incidents.

On appeal, the Applicant maintains that his Form I-212 application should be granted because his "convictions occurred over two decades ago." He also argues that although his "actions were unwanted and unsolicited," his offenses were not serious because "they did not involve rape or sexual assault and certainly did not involve any penetration or sexual contact." He further states that "he did not kidnap anyone, he did not forcibly penetrate anyone, he did not threaten anyone, and he did not use any physical force." We do not accept the Applicant's attempt to minimize his multiple offenses against another's body that ultimately led to five convictions, with imprisonment terms totaled one year and three months. Moreover, as noted, he has failed to submit conviction records for all his convictions. As such, he has not sufficiently established the circumstances surrounding his [redacted] 1996 convictions for three counts of criminal sexual conduct in the fourth degree by force or coercion or his [redacted] 2000 conviction for sexual assault. Without additional evidence, the Applicant has not demonstrated what sexual acts he was found guilty of committing and whether the victims were adults or minors.

The record includes letters from a social worker in Canada, [redacted] who had been the Applicant's therapist. According to her September 2019 letter, the Applicant was not in "Offense Specific Therapy" because "his treatment goals had been met." She stated in the letter that he "has evolved significantly over the past fifteen years" and that she considered "him a very low risk of recidivism, and no threat to public safety." In an earlier letter, dated May 2008 [redacted] indicated that the Applicant was referred to her by his probation officer and that he "attended Offender Specific Therapy in [her] practice from February 2001 to June 2006." In his December 2017 statement, the Applicant claimed that he "had recovered 100% from the sexual impulses and acting out which once affected [him]." He blamed his poor impulse control on a brain injury he suffered in 1986 when he was in the eighth grade. He also blamed his offenses on his relationship with his first wife, stating that the "constant arguing with [her], dealing with her high anxiety, social isolation and feeling extremely unhappy and unfulfilled all contributed to [his] behavior." He asserted that after his met his second and current wife, with whom he shares "similar personalities," he has "never acted out sexually outside of [his] marriage."

In his August 2019 statement, he asserted that the denial of his Form I-212 application would result in hardship on him, because he would not be able to visit his two United States citizen sons, and that he "just want to be able to be close to them as they grow into adulthood." He also claimed to operate a business with his wife in Canada and that the denial of his Form I-212 application would result in him not being able to attend conferences in the United States or transit through the United States. He reiterated in the statement that he "simply wish to have the ability to visit [his] family and attend conferences" in the United States.

Upon a careful review of the record, we conclude that that the Applicant has not demonstrated eligibility for the Form I-212 application. Specifically, he has not shown that the favorable factors in this case outweigh the unfavorable ones. As such, we find that approval of the application is not warranted as a matter of discretion. *See Matter of Lee*, 17 I&N Dec. at 278-79. The positive factors in this case include the Applicant has two United States citizen sons, who are approximately 24 and

20 years old;[4] he lived in the United States for approximately three years between 1995 and 1998; he has not been convicted of a crime since [redacted] 2000; he has presented letters from [redacted] indicating that he has "a very low risk of recidivism, and [poses] no threat to public safety"; he has offered other letters discussing his moral character; he has operated a business in Canada with his wife and is active at his church; and he claimed that the denial of his Form I-212 application would cause him hardship for not being able to visit his sons and attend conferences in the United States or transit through the United States when he is traveling internationally. *See Matter of Tin*, 14 I&N Dec. at 373-74.

Some of these positive factors, such as his operation of a business in Canada and his desire to attend conferences in the United States to further his business interest, came into existence after he was removed from the United States in 1998. Thus, we will give them less weight in our discretionary determination. *See Garcia-Lopes*, 923 F. 2d at 74; *Carnalla-Munoz*, 627 F. 2d at 1007. Additionally, we note that the record does not include evidence, such as letters, from the Applicant's sons regarding the Applicant's desire to visit them in the United States. Also, the Applicant indicated in his August 2019 statement that his wife has been attending conferences in the United States to further their business interest, and that his sons have been visiting him in Canada "about once a month."

Notwithstanding the above discussed positive factors, this case includes significant negative factors. As discussed, the Applicant was removed from the United States for having been convicted of a crime involving moral turpitude. *See* Section 237(a)(2)(A)(i) of the Act.[5] While his removal had occurred over twenty years ago, the record shows that he had multiple convictions for criminal sexual conduct in the fourth degree by force or coercion in Michigan before his removal, and a conviction for sexual assault in Canada after his removal. As noted, the Applicant has not presented conviction records for all his convictions, explaining the circumstances of his offenses. Without additional documentation, he has not established what specific sexual acts he was found guilty of committing and if his victims were adults or minors. Additionally, the Applicant has admitted to committing other offenses between June and November 1995, for which he has not been criminally held accountable. His repeated offenses that were all sexual in nature (most of which were by force or coercion), his imprisonment terms that totaled a year and three months, as well has his inability to offer conviction records that detail his underlying actions associated with all his offenses are serious negative factors, and they outweigh the positive ones in this case. *See Matter of Tin*, 14 I&N Dec. at 373-74.

III. CONCLUSION

As discussed, CBP denied the Applicant's Form I-192 application and the Board dismissed his subsequent appeal. As the Applicant remains inadmissible to the United States under Section 212(a)(2)(A)(i)(I) of the Act, no purpose would be served in granting the Form I-212 application. We

[4] According to the Applicant's August 2019 statement, in 2019, his sons were 21 and 17 years old, and they were "working and/or attending school" in the United States.
[5] On appeal, the Applicant argues that he had not been convicted of an aggravated felony as defined in Section 101(a)(43)(F) of the Act. *See* Section 237(a)(2)(A)(iii) of the Act. We need not address this issue, as our decision does not rely on a finding that he had been convicted of an aggravated felony.

will therefor dismiss his appeal of the Form I-212 application denial as a matter of discretion. *See Matter of Martinez-Torres*, 10 I&N Dec. at 776-77.

In the alternative, upon a review of the record before us, we find that the Applicant has not established he merits approval of his Form I-212 application because the favorable factors in this matter do not outweigh the unfavorable ones. We will therefore dismiss his appeal of the Form I-212 application denial as he has not demonstrated that the application should be granted in the exercise of discretion.

ORDER: The appeal is dismissed.