



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 17293819

Date: APR. 20, 2022

Appeal of Philadelphia, Pennsylvania Field Office Decision

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

The Applicant seeks conditional 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), because he will be inadmissible upon departing from the United States for having been previously ordered removed.

The Director of the Philadelphia, Pennsylvania 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 contends that the favorable factors outweigh the unfavorable factors. We note that the Applicant asserts that he will submit a brief within 30 days. To date, more than a year after the appeal's January 2021 filing date, the record does not contain a brief or any further submission from the Applicant. Therefore, we consider the record to be complete.

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 dismiss the appeal.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides, in part, that a noncitizen who has been ordered removed, or who departed the United States while an order of removal was outstanding, is inadmissible for 10 years after the date of departure or removal.

A noncitizen 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 re-embarkation at a place outside the United States or attempt to be admitted from foreign continuous 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 (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).

II. ANALYSIS

The Applicant is currently in the United States and seeks conditional permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before he departs.¹ He does not contest that he will be inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure for having been previously ordered removed. The only issue on appeal is whether the Applicant has demonstrated that approval of his Form I-212 application is warranted as a matter of discretion.

The Applicant entered the United States without admission in or around 2009. Removal proceedings began after the Applicant was arrested and charged with multiple traffic violations in [] 2017. In August 2017, his U.S. citizen spouse (whom he married in 2013) filed an immigrant relative petition on his behalf. In [] 2020, the Applicant was granted until May 7, 2020 to voluntarily depart the United States. The notice granting voluntary departure advised the Applicant that, if he failed to depart during the period allowed, then an order of removal would be entered against him; he would be subject to a civil penalty of \$3000; and he would be ineligible for several immigration benefits including cancellation of removal and adjustment of status.² The Applicant remained in the United States after that deadline, and the grant of voluntary departure became an order of removal.

The Director denied the application as a matter of discretion, concluding that the favorable factors in the Applicant's case did not outweigh the unfavorable factors. In terms of factors that weigh in his favor, the Applicant states that he is the family's primary source of income, and his spouse has medical issues that have left her unable to work and heavily reliant on the Applicant's assistance, as well as two home health aides. The record documents the spouse's treatment relating to a progressive orthopedic condition. The Applicant asserts that his spouse would not have access to adequate medical care in Mexico. The Applicant's spouse states that she has several relatives living within an hour of her, including all three of her children, her parents, and a brother, but she claims: "None of my family could take us in – they don't have the room nor are they financially stable enough."

The Applicant's U.S. citizen spouse has three adult biological children, born in 1995, 1996, and 1998, two of whom have young children of their own. The Applicant's spouse states that she and the Applicant have custody of one grandson, born in 2014; take care of an infant granddaughter "50% of the time," and frequently care for another grandson. The Applicant refers to the young boy as his "adopted son," but the record does not include documentary evidence of custody or adoption.

¹ The approval of the Form I-212 under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if he failed to depart.

² *See* section 240B(d) of the Act, 8 U.S.C. § 1229c(d).

The Applicant also indicates that his spouse's grandson does not speak Spanish and would therefore be at a serious educational disadvantage in Mexico. The Applicant asserts that the grandson has serious behavioral problems; a home health aide asserts that the grandson "suffers from sep[a]ration anxiety when [the Applicant] is not around."

Looking at these family issues, the Director concluded that the Applicant's spouse "would certainly experience considerable hardship . . . [that] would likely rise above and beyond the normal consequences of removal."

The Applicant submits a copy of *Mexico 2018 Human Rights Report*, a 37-page document prepared by the U.S. Department of State. The Applicant makes the general assertion that "Mexico is economically depressed [and] has poor health care," but he does not cite to any specific information in this report or explain how it should weigh in his favor.

With regard to unfavorable factors, the Director cited the Applicant's unlawful entry and presence in the United States, and noted that the Applicant has not shown that he was authorized to work in the United States or that he paid income tax on his earnings. The Director also gave considerable weight to the Applicant's three arrests between 2014 and 2020.³ The Director concluded that "the most significant negative factor" is the Applicant's "ongoing disregard of the immigration laws of the United States," as shown when the Applicant requested, and received, voluntary departure in lieu of an order of removal, and then failed to depart voluntarily as he had agreed to do.

On appeal, the Applicant asserts that his spouse needs his support in the United States, and that he has at least intermittently filed income tax returns. The Applicant states that his criminal record does not involve crimes of moral turpitude, and contends that the COVID-19 pandemic prevented him from departing the United States during the time granted.

Upon consideration of the record, we do not find that the Applicant's arguments on appeal overcome the Director's stated grounds for denial. The Applicant asserts that his spouse "cannot survive without me in the United States. I am now my wife's caretaker and her health deteriorates every month. She can't live in Mexico with her condition." Materials in the record show that the Applicant's spouse is under the care of an orthopedist for a bone disorder, and has difficulty with some daily activities, but those materials do not fully support all of the Petitioner's claims. Documentation in the record does not indicate that his spouse is permanently reliant on home health aides. Rather, after the Applicant's spouse had hip replacement surgery, the aides were provided as part of a six-month plan scheduled to end in December 2019. Follow-up medical documents in the record indicate improvement in the spouse's condition after that surgery. The Applicant has not shown that other arrangements for care are unavailable. The Applicant's spouse states that she cannot move in with her U.S. relatives, but nothing shows that these relatives are unable to contribute in other ways to the care of the Applicant's spouse and grandson. The Applicant's employment with a painting company establishes that he

³ The most serious incident took place in 2017, when the Applicant was observed driving erratically at speeds of up to 85 miles per hour. The 2017 arrest resulted in charges on ten violations, including driving under the influence of alcohol with a blood alcohol content exceeding 0.16%. The Director noted that the Applicant submitted court and police documentation of the charges from 2017, but the evidence did not show the disposition of those charges. The Applicant does not dispute the arresting officer's description of the events in an affidavit of probable cause.

routinely leaves home to work, and therefore he has not been his spouse's full-time caretaker. The Applicant's spouse asserts that her grandson has "cries and screams" at school, but a letter from the school confirms only that the child is a student there. Furthermore, there are significant adverse factors that weigh against the Applicant's family responsibilities.

The Applicant attempts to address the unfavorable factors on appeal, but he does not overcome them. He asserts: "I have filed taxes, albeit not consistently, which will be submitted along with other evidence as part of this appeal." As noted above, the record does not contain any supplement to the appeal, and therefore the Applicant has not substantiated this claim.

While the Applicant's criminal record may not involve crimes of moral turpitude, the present matter involves a broader discretionary determination rather than the narrower issue of inadmissibility under section 212(a)(2)(i)(I) of the Act. Whether or not driving at high speed under the influence of alcohol meets the legal definition of a crime of moral turpitude, the offense entails the potential to cause serious injury or death to others. The Applicant's recent and continuing pattern of arrests, including a conviction that occurred after he filed the Form I-212 application, does not indicate respect for law and order.

Another indication of the Applicant's low regard for law and order is that, after entering, remaining, and working in the United States without authorization, he requested and received the privilege of voluntary departure, but did not comply. The Applicant asserts: "I didn't willfully defy the voluntary departure order, as I was required to leave in the middle of a pandemic." The Petitioner does not elaborate. It is important to note that he was granted voluntary departure on [REDACTED] 2020, before the pandemic had caused significant disruptions in either the United States or Mexico. The Petitioner has not submitted any evidence to show that he was making good faith arrangements to depart before the pandemic, nor has he provided any details to explain how that emergency prevented his departure or shown that he made any attempt to notify immigration authorities that he would be unable to depart within the time permitted.

For the above reasons, we agree with the Director that the evidence is insufficient to warrant a favorable exercise of discretion.

The Applicant has the burden of proof in seeking permission to reapply for admission. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Significant adverse factors, including multiple recent arrests and failure to depart voluntarily after requesting and receiving that privilege, weigh against approval of the application.

ORDER: The appeal is dismissed.