



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 19420007

Date: JUNE 14, 2022

Appeal of Los Angeles, California Field Office Decision

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

The Applicant, a citizen of Indonesia, 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). The Director of the Los Angeles, California Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), as a matter of discretion, concluding that favorable factors did not outweigh the unfavorable factors in the case. The Applicant filed an appeal of the decision with this office. On appeal, the Applicant contends that she has established eligibility for the benefit sought. 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 to the Director for further proceedings.

I. LAW

Section 212(a)(9)(A)(ii) of the Act provides that any noncitizen, other than an “arriving alien” described in section 212(a)(9)(A)(i), who has been ordered removed or 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) if, prior to the date of the reembarkation 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, 373-74 (Reg’l Comm’r 1973). The burden of proof is on an applicant

to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The record reflects that between July 1999 and March 2019 traveled to the United States with a visitor's visa on seven occasions – with visits between two weeks and five months. In [REDACTED] 2019, upon application for admission to the United States with a visitor's visa, the Applicant was referred to secondary inspection as a possible intended immigrant without an immigrant visa. She was found inadmissible under section 212(a)(7)(A)(i)(I) of the Act, for engaging in unauthorized unemployment from July 2015 through November 2015, and expeditiously removed.

In denying the Form I-212, the Director listed the Applicant's favorable factors as her apparent lack of criminal history, marriage to a U.S. citizen,¹ her spouse's medical conditions, and her spouse's family ties in the United States. The Director found that the Applicant's unfavorable factors included her removal, unauthorized employment in the United States, and the short duration of time that she has resided abroad since her removal. The Director concluded that the Applicant's favorable factors are all after-acquired equities and therefore their weight is diminished.

On appeal, the Applicant contends that the Director did not follow established law in weighing the favorable and unfavorable factors presented in the record. Specifically, the Applicant asserts that the Director erred by giving little weight to her spouse's family ties and responsibilities because they are after-acquired equities. The Director commented that "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement or deportation proceedings." She further asserts that her relationship with her spouse is not an after-acquired equity because they were engaged prior to her removal. In addition, she states that the Director did not specifically address the fact that her spouse is an only child and primary care provider for his elderly parents who suffer from numerous medical conditions which makes relocating to Indonesia an impossibility. She also submits additional evidence, including updated medical documentation relating to her mother-in-law's health status.

While it is true that favorable factors ("equities") acquired after an order of deportation, exclusion, or removal has been entered may be given less weight in assessing favorable factors in the exercise of discretion, they should not be dismissed as such, and they must still be considered and balanced against the adverse factors in the totality of circumstances. See *Garcia Lopes v. INS*, 923 F.2d 72, 74 (7th Cir. 1991) (noting that 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) (noting that 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). Thus, depending on the specific facts, such as the length of time since the removal order, or the number and strength of the equities (e.g., longstanding demonstration of good moral character, family ties, contributions to the community, business ownership, etc.) after-acquired equities may be sufficient to outweigh the unfavorable factors. *Garcia-Lopes v. INS*, 923 F.2d at 76; *Matter of Tijam*, 22 I&N Dec. at 417.

¹ The record reflects that in [REDACTED] 2020, the Applicant married her spouse in Indonesia.

Here, while the Director referenced the Applicant's spouse's medical conditions and family ties, the decision does not indicate that the Director fully considered the Applicant's spouse's claimed hardships with respect to both his health and his caregiver responsibilities to his parents. Specifically, the Applicant's spouse states that he suffers from and is being treated for diabetes and kidney damage. He further states that his parents suffer from several serious medical conditions, and as their only child, he is their primary caregiver. He indicates that he is experiencing emotional and medical hardship resulting from fulfilling his role as primary caregiver to his parents as well as managing his health and the family business. He maintains that having the Applicant with him would provide him with immeasurable assistance. In support of the hardship claims, the record contains medical documentation indicating that the Applicant's spouse has been diagnosed with and is being treated for diabetes, chronic kidney disease, hyperlipidemia, and hypertension. The record also contains medical documentation indicating that the Applicant's 84-year-old mother-in-law has a history of multiple strokes – the last one occurring in October 2020 – and has difficulty with cognition and ambulation. The documentation further indicates that the Applicant's mother-in-law's ability to care for herself has progressively worsened, and the Applicant's spouse is his mother's primary caregiver. The record also contains medical documentation indicating that the Applicant's 79-year-old father-in-law has been diagnosed with coronary heart disease, diabetic neuropathy, emphysema, osteoarthritis, and polyneuropathy.

In light of the foregoing, we find it appropriate to remand the matter to the Director to reevaluate the submitted evidence, including that submitted on appeal, and determine whether the Applicant warrants 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.