U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16608397

Date: JUNE 16, 2022

Appeal of Queens, New York 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 Queens, New York Field Office denied the application. The Director concluded that the Applicant had not shown that a favorable exercise of discretion is warranted, because there is a non-waivable ground of inadmissibility that precludes approval of the application.

The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and asserts that he is not responsible for false claims previously made on his behalf, and that he was unaware of a removal hearing that he failed to attend in 2000.

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 entered the United States in February 1993 as a B-2 nonimmigrant visitor. Two months later, the Applicant applied for asylum using a false name and a false date of birth. On the asylum application form, under "Other names used," the Applicant wrote "None." He was ordered removed *in absentia* after he failed to appear for a removal hearing in [redacted] 2000.[1] All the documentation pertaining to this proceeding is under the Applicant's assumed name.

In 2003, the Applicant applied for adjustment to lawful permanent resident status under his true name, based on an approved employment-based petition. On the adjustment application, asked whether he had ever previously "sought to procure, or procured . . . any immigration benefit" "by fraud or willful misrepresentation of a material fact," the Applicant answered "No." The application was approved and the Applicant became a lawful permanent resident in 2005.

In 2011, he applied for naturalization. On the naturalization application, asked if he had "ever given false or misleading information to any U.S. Government official while applying for any immigration benefit or to prevent deportation, exclusion, or removal," the Applicant answered "No." The Applicant also answered "No" when asked if had had "ever been ordered to be removed, excluded, or deported from the United States." The naturalization application was administratively closed after the Applicant failed to appear for his naturalization interview.

In [redacted] 2016, the Applicant was apprehended by U.S. Customs and Border Protection. He stated that he used his "nickname" on the asylum application because "[s]ome people misguided [him]." Asked why he had not disclosed this use of an assumed name during his adjustment interview, the Applicant responded that he "forgot." In [redacted] 2016, new removal proceedings were instituted against the Applicant, alleging that he provided false information on his asylum application by seeking an immigration benefit under a false name and date of birth, and on his subsequent adjustment and naturalization applications by failing to disclose his prior misrepresentation and removal order.

The Applicant filed the Form I-212 application in March 2020, indicating he had "only been removed once and [the] removal was less than ten years ago." We note that the removal order was issued in 2001. The new removal proceedings, initiated in 2016, are evidently still pending.

[1] The Applicant had sought an adjournment based on a physician's statement that the Applicant "is being followed & treated for hypertension." The physician's letter did not state any reason why the Applicant's high blood pressure would prevent him from attending the hearing. The adjournment was not granted.

The Director denied the Form I-212 application, concluding that the favorable factors in the case – family ties, length of residence in the United States, and lack of criminal history – are outweighed by the Applicant's repeated false statements to immigration authorities and his failure to attend his removal hearing in 2000. Under section 212(a)(6)(B) of the Act, an individual who fails to attend a removal hearing is inadmissible for five years after their subsequent departure from the United States. Because no waiver exists for this ground of inadmissibility, the Director determined that this ground of inadmissibility outweighs any positive discretionary factors.

On appeal, the Applicant asserts that he and his family would face significant hardship if they were to relocate to his native Bangladesh. The Applicant submits medical documentation pertaining to his family, and country condition information regarding Bangladesh. As the Director explained in the denial notice, these factors cannot overcome the non-waivable five-year period of inadmissibility imposed by section 212(a)(6)(B) of the Act. Therefore, it would serve no constructive purpose to discuss these issues unless the Applicant first overcomes his failure to appear.

There is an exception to the five-year bar if the noncitizen had reasonable cause for failing to appear at the removal hearing. On appeal, the Applicant claims that he had reasonable cause because he was not aware of the removal proceedings at the time. He asserts that he had parted ways with the unnamed "broker" who persuaded him to file the asylum application, and he assumes that the "broker" filed a motion to reopen the removal proceeding, and then appealed the denial of that motion, without the Applicant's knowledge.

The Applicant provides no corroboration for these claims. An asylum interview took place in August 1998, and shortly thereafter the Applicant was personally served with a notice to appear. A [redacted] 2001 decision by an Immigration Judge indicates that the Applicant personally attended a preliminary "master calendar" hearing in [redacted] 1999, at which time he "acknowledged proper service of the Notice to Appear, admitted the truth of the factual allegations and conceded that he was removable as charged." Given these references to the Applicant's presence, it bears noting that the file contains photocopies of a New York identification card and a Bangladeshi passport, both in the Applicant's assumed name, and both showing the Applicant's photograph. The Applicant was also fingerprinted at least twice while using the assumed name.

The Applicant's claim that he had reasonable cause to miss his [redacted] 2000 removal hearing is unsupported, and inconsistent with evidence from the period in question. Therefore, we cannot find that the Applicant has established reasonable cause. We agree with the Director's determination that a favorable exercise of discretion is not warranted in this matter and find that no purpose would be served in approving the Form I-212, as the record indicates that the Applicant would become inadmissible for five years upon departure from the United States under section 212(a)(6)(B) of the Act. There is no waiver for this five-year bar.

ORDER: The appeal is dismissed.