



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 16677047

Date: JUN. 21, 2022

Appeal of Hartford, Connecticut 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)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), for having been previously ordered removed from the United States.

The Director of the Hartford, Connecticut 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 did not give sufficient weight to favorable discretionary factors.

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).

Equities that came into existence after a foreign national has been ordered removed from the United States ("after-acquired equities"), including family ties, have diminished weight for purposes of assessing favorable factors in the exercise of discretion. 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

The Applicant, a national and citizen of Guatemala, entered the United States in or around April 2015 without being inspected or admitted. His application for asylum and withholding of removal was denied in [] 2017, and he was ordered removed from the United States. However, the Applicant did not leave and has been residing in the United States since that time. Therefore, he will become inadmissible under section 212(a)(9)(A)(ii) of the Act upon departure from the United States. He does not contest this finding on appeal. The issue on appeal is whether the Applicant merits a favorable exercise of discretion and is based on a review of the record.

The Applicant married his U.S. citizen spouse in [] 2018. His spouse filed a Form I-130, Petition for Alien Relative, on his behalf, and it was approved in September 2019. The record shows that the Applicant and spouse have a biological U.S. citizen child who was born in [] 2019, and that the Applicant and his spouse each have a child from a previous relationship living in the United States.¹

The Applicant asserted that his family would experience financial hardship without his income, his spouse and children would experience emotional hardship without him, and his spouse would not be able to both afford their expenses and raise their children. The Applicant stated that if they moved to Guatemala, he and his spouse would be unable to find employment, his spouse would suffer emotional hardship because his stepchild would not be able to accompany them because of child custodial agreements, and that his spouse would experience safety issues. In support of the application, the Applicant provided evidence including, but not limited to, a statement from his spouse; the Applicant's and spouse's marriage certificate; custody and education planning documents regarding his spouse's child; birth certificate and family service plan for the child of the Applicant and his spouse; letters written in support of the Applicant's application; financial documents; and information regarding country conditions in Guatemala. The Director acknowledged that there were favorable considerations in the Applicant's case, including letters attesting to his moral character, length of time in the United States, and his family ties and responsibilities in the United States.

The Director determined, however, that these positive factors were insufficient to overcome the negative impact of the Applicant's failure to comply with his removal order. The Director determined the Applicant's family ties and responsibilities held diminished weight in the discretionary analysis because any potential financial and emotional hardships stemming from those family relationships had

¹ The Applicant states that his child from a previous relationship was born in Guatemala and is living in New Jersey.

been created after he had been ordered removed and were therefore “after-acquired equities.” The Director was also unable to determine whether the Applicant’s departure from the United States would result in financial hardship to his spouse because the evidence did not include any documents, such as earning statements and list of expenses, to demonstrate the Applicant’s contribution to his household.

On appeal, the Applicant reasserts his contention that he warrants a favorable discretion and that his family would suffer extreme emotional and financial hardship regardless of whether he were to return to Guatemala alone or his wife relocated with him. In addition, the Applicant has discovered that the child he and his spouse share has a medical condition, [REDACTED] syndrome, and argues that the child may not receive appropriate specialty care in Guatemala. The Applicant also provides additional evidence, including their 2019 and 2020 tax returns, an affidavit from his spouse, and their child’s medical records.

As stated above, we must weigh any negative factors against the positive equities to determine if approval of the application is warranted as a matter of discretion. The Applicant’s favorable factors include his family ties and responsibilities in the United States; an approved Form I-130, Petition for Alien Relative; and his length of time in the United States. We also acknowledge the letters supporting the Applicant’s moral character.

While we acknowledge the Applicant’s family would experience typical emotional hardships due to removal of a family member, the record does not include sufficient evidence to establish the level of financial hardship they would experience. Although the spouse’s affidavit attests to their family’s monthly expenses, the Applicant has not provided any documents that would support those claimed expenses or the asserted \$18,000 they spend on childcare. Nor has the Applicant provided any evidence to support his spouse’s claim that she cannot work because she was advised to keep their child at home due to the coronavirus.² Furthermore, there is nothing in the record to suggest conclusively that the spouse would not be able to find employment in the Applicant’s absence or in the event of her relocation.

Also, the Applicant states that his children will not have their specific educational and medical needs meet if the family is to relocate to Guatemala. However, the Applicant has not provided sufficient evidence to substantiate that claim. Moreover, while we acknowledge their child’s medical condition, [REDACTED] syndrome, the Applicant’s child does not currently appear to require any medical attention and, by Counsel’s admission, the odds of the child “needing significant care [are] low.” Thus, the evidence considered in its totality is still insufficient to show the extent of the claimed financial, emotional, and medical hardship to the Applicant’s family that would result from his absence or the family’s relocation. Moreover, we agree with the Director that such familial ties, responsibilities, and hardships have a diminished weight in the discretionary analysis, because the Applicant’s marital relationship, children, and related equities came into existence after he had been ordered removed.³

² Initially, the Applicant asserts that his spouse would not be able to work due to her child delivery and emergency C-section.

³ As earlier noted, the Applicant was order removed in [REDACTED] 2017 and was married in [REDACTED] 2018.

The negative factors in this case are more significant and include the Applicant's entry without inspection in 2015, lengthy unauthorized period of stay, and failure to depart the United States pursuant to his removal order.

Viewing the totality of the circumstances, including the Applicant's immigration violations and the after-acquired equities, we find that the Applicant has not established that the favorable factors in his application outweigh the unfavorable ones. Therefore, a favorable exercise of discretion is not warranted, and the application will remain denied.

ORDER: The appeal is dismissed.