



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

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

In Re: 33774444

Date: SEP. 16, 2024

Appeal of New York, New York Field Office Decision

Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal

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), because he will be inadmissible upon departing from the United States for having been previously ordered deported.

The Director of the New York, New York Field Office denied the application, concluding that the record did not establish that a favorable exercise of discretion was warranted. On appeal, the Applicant asserts that the positive factors outweigh the negative factors in his case and he should thus be granted conditional approval of his application in the exercise of discretion.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions 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 sustain the appeal.

Section 212(a)(9)(A)(ii) of the Act provides in relevant part that any noncitizen 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 who are 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 contiguous 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).

The Applicant currently resides in the United States, and he is seeking conditional approval of his application under the regulation at 8 C.F.R. § 212.2(j) before departing the United States to apply for an immigrant visa. The approval of his application under these circumstances is conditioned upon the Applicant's departure from the United States and would have no effect if he fails to depart.

In the decision to deny the application, the Director outlined that the Applicant's favorable factors included hardship to his U.S. citizen spouse, family unity, medical records, affidavits, financial documents, and country condition articles. The Director indicated that the unfavorable factors in the Applicant's case were his deportation order, his failure to depart the United States pursuant to the deportation order, and his periods of unlawful presence in the United States. The Director concluded that the favorable factors were not sufficient to outweigh the unfavorable factors.

On appeal, the Applicant contends that the Director failed to conduct meaningful analysis of the significant medical hardship presented in the case, namely, the specialized educational and therapeutic services two of the Applicant's children need as a result of being diagnosed with autism. The Applicant also asserts that the positive factors in his case were not properly weighed by the Director.

As stated above, we must weigh any unfavorable factors against the favorable factors to determine if approval of the application is warranted as a matter of discretion. Though the Director listed some of the favorable factors in the Applicant's case, the denial did not offer substantive analysis of said factors. The Director also did not discuss other relevant favorable factors in the Applicant's case, including his residence in the United States since 1994; the Applicant's compliance with an order of supervision granted to him by U.S. Immigration and Customs Enforcement in April 2011; an approved Form I-130, Petition for Alien Relative, on the Applicant's behalf; the presence of five children born in the United States; the Applicant's employment and financial support of his family; the payment of taxes; the Applicant's apparent lack of a criminal record; the documented diagnosis of autism of two of the Applicant's children; and the hardships to the Applicant and his children were he unable to remain in the United States.

While we acknowledge the negative factors in the Applicant's case, the Applicant has resided in the United States for approximately 30 years, is married to a U.S. citizen and has five U.S. citizen children, supports his family financially and pays taxes, and does not appear to have a criminal record. Furthermore, the Applicant has established that two of his children have been diagnosed with autism, and he and his family will experience hardship if he relocates abroad. We thus conclude on appeal that the positive factors in the Applicant's case outweigh the negative ones, and a favorable exercise of discretion is therefore warranted in his case.

ORDER: The appeal is sustained.