



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

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

In Re: 10857746

Date: SEPT. 28, 2020

Appeal of Charlotte, North Carolina 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), because she will be inadmissible upon departing from the United States for having been previously ordered removed. Permission to reapply for admission to the United States is an exception to this inadmissibility, which U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion.

The Director of the Charlotte, North Carolina Field Office denied the application as a matter of discretion, concluding that the unfavorable factors outweighed the positive equities. On appeal, the Applicant submits additional documentation and contends that her case merits approval.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, as explained below, we will remand the matter to the Director for the entry of a new decision.

The Applicant is currently in the United States and seeks permission to reapply for admission pursuant to the regulation at 8 C.F.R. § 212.2(j) before departing the United States.¹ She does not contest that she has an outstanding order of deportation and will be inadmissible under section 212(a)(9)(A)(ii) of the Act once she departs.²

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

¹ The approval of her application is conditioned upon departure from the United States and would have no effect if the Applicant does not depart.

² The record indicates that the Applicant was admitted into the United States in 1994 with a K-1 nonimmigrant visa. In 1998, an immigration judge denied the Applicant's request for asylum in the United States and granted her voluntary departure with an alternate order of removal to China. The Board of Immigration Appeals dismissed the Applicant's subsequent appeal in 2002. The Applicant did not depart and continues to reside in the United States.

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, and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience").

In denying the application, the Director determined that the unfavorable factors outweighed the positive equities. The denial acknowledged the Applicant's favorable factors, such as close family ties to the United States, lack of any criminal history, good moral character, charitable contributions, and payment of taxes. However, the Director found that the Applicant did not establish that her four U.S. citizen children and her lawful permanent resident spouse and mother would suffer extreme hardship if she is not allowed to return to the United States.³ The denial noted that her youngest children, currently 14 and 11 years old, could receive support and help from the Applicant's spouse, mother, sister, and two oldest children, and that children thrive and prosper every day with only one parent in their lives. The Director also indicated that the Applicant's family has sufficient financial means to provide her and her children with an adequate lifestyle.

In addition, the Director determined that the Applicant's claim of hardship appeared dubious when viewed through the lens of doubt created by the immigration judge's adverse credibility finding during her 1998 deportation proceedings. The denial indicated that the immigration judge decided the Applicant lacked credibility because she fabricated a story about her father being arrested in China. The Director concluded that this was a substantial unfavorable factor in deciding a discretionary benefit because she was found to lack credibility in trying to obtain an immigration benefit in front of an immigration judge, and therefore, this lack of credibility finding sheds a certain degree of doubt on everything the Applicant submits to USCIS for the purpose of obtaining an immigration benefit.

On appeal, the Applicant submits new, material evidence and contends that the Director erred in concluding that the immigration judge made an adverse credibility finding during the Applicant's 1998 hearing. The Applicant further contends that the Director failed to fully consider the hardship that she and her family members would suffer if she is not allowed to return to the United States. Specifically, the Applicant provides psychological evaluations for her two youngest children that indicate they suffer from anxiety and depression and they would experience emotional hardship if they remained in the United States without their mother or relocated to China with the Applicant.

Upon review, the record supports the Applicant's assertions on appeal. The Director erred by concluding that the immigration judge made an adverse credibility finding during the Applicant's 1998 hearing and that the alleged lack of credibility finding sheds a certain degree of doubt on everything

³ We note that extreme hardship to a qualifying relative is a requirement for certain waivers of inadmissibility, but it is not a requirement for permission to reapply for admission. The Applicant may seek conditional permission to reapply for admission prior to departure, irrespective of whether a Form I-601, *Application for Waiver of Grounds of Inadmissibility*, will be needed for unlawful presence or fraud or misrepresentation when applying for an immigrant visa. *See Instructions for Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal – Where to File*, <https://www.uscis.gov/i-212>.

the Applicant submits to USCIS for the purpose of obtaining an immigration benefit. The immigration judge's 1998 decision specifically stated that although the Applicant bears some responsibility for reciting a fabricated story to a U.S. government official during her affirmative asylum interview, she admitted that it was untrue and for that reason he found that she still warranted relief as a matter of discretion. The immigration judge further stated that he balanced this negative factor against the fact that the Applicant was a teenager when she came to the United States, and though she put herself in the hands of individuals who have no respect for the laws of the country and encouraged her to lie under oath during her asylum interview, he gave the Applicant the benefit of the doubt and did not find that this negative factor warranted a denial of her request for voluntary departure as a matter of discretion.

Moreover, even assuming *in arguendo*, that the immigration judge had made an adverse credibility finding, which the record does not show, the Director erred in determining that a lack of credibility finding from a 1998 hearing with an immigration judge sheds doubt on everything the Applicant submits to USCIS for the purpose of obtaining an immigration benefit. We acknowledge that an applicant must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* However, the Director did not specify that the record contained any unresolved material inconsistencies that would lead USCIS to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit.

Therefore, in determining that the Applicant did not merit a favorable exercise of discretion, the Director erred by concluding that an alleged lack of credibility finding during a 1998 hearing with an immigration judge was a substantial unfavorable factor in deciding whether her instant case merited a discretionary approval. Considering the Director's unsupported finding that the Applicant's current claim of hardship appeared dubious, the record shows that the Director failed to properly consider whether the Applicant's favorable factors outweigh the negative equities.

In addition, the Director erred by not considering other significant favorable factors presented by the Applicant, to include the hardship she would suffer in China, and the emotional hardship her spouse, mother, and siblings would experience. When considering whether the Applicant's request for permission to reapply for admission to the United States merits a favorable exercise of discretion, positive factors may include the family responsibilities and hardship involved to the Applicant and other U.S. citizen or lawful permanent resident relatives.⁴ Though the Director acknowledged the submitted affidavits from the Applicant, her spouse, and four children, the denial did not address any hardship the Applicant or her spouse would suffer. Further, the Director failed to fully address the emotional hardship the Applicant's young children would experience upon separation from their mother or upon relocation to China with the Applicant.

Considering the new evidence submitted on appeal, and in light of the deficiencies noted above, we find it appropriate to remand the matter to the Director to determine in the first instance whether the Applicant merits a favorable exercise of discretion.

⁴ See page 14 of the *Instructions for Form I-212*.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.