U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27640855

Date: AUG. 30, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant seeks to become a lawful permanent resident (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on their "U-1" nonimmigrant status as a victim of qualifying criminal activity. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), concluding that the Applicant had not established they were lawfully admitted to the United States in U status and had not maintained U status at the time of filing the U adjustment application. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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, the appeal will be dismissed.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant "admitted into the United States . . . under section 101(a)(15)(U) [of the Act]" to that of an LPR if the applicant meets the eligibility criteria and otherwise establishes that their continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m)(1) of the Act.

Implementing regulations require a U adjustment applicant to establish that they were "lawfully admitted to the United States" as a U nonimmigrant, that they continue to hold "such status at the time of application," and that their "presence in the United States is justified on humanitarian grounds, to ensure family unity, or is in the public interest." 8 C.F.R. § 245.24(b)(2)(i), (b)(2)(ii), (b)(6).

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Applicant entered the United States without inspection, admission, or parole in 2003. In October 2012, the Applicant was the victim of a domestic violence dispute. The Applicant cooperated with law enforcement authorities and filed a Form I-918, Petition for U Nonimmigrant Status (U petition)

on this basis in April 2013. The Director approved the Applicant's U petition in October 2015, granting them U nonimmigrant status from October 2015 to September 2019.

In conjunction with the filing of the U petition, the Applicant filed a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (waiver application), seeking a waiver of any applicable grounds of inadmissibility. On their waiver application, the Applicant acknowledged an attempted entry at the San Ysidro point of entry in 2003, followed by an entry without admission or parole in 2003. The Applicant requested a waiver of these grounds of inadmissibility "and any others that USCIS may apply." The Applicant's waiver application did not designate specific inadmissibility grounds. Based on these disclosures, the Director found the Applicant inadmissible under section 212(a)(6)(A)(i) of the Act for entry without inspection, admission, or parole. The waiver application was granted and this ground of inadmissibility was waived concurrently with the U petition approval.

Prior to the grant of U nonimmigrant status, the applicant applied for admission to the United States in June of 2015. While applying for admission, government records indicate the Applicant claimed to be in U nonimmigrant status. The Applicant was permitted to enter the United States. However, the Applicant had not yet been granted U nonimmigrant status. Government records do not indicate that the Applicant had been granted advance parole that would allow reentry or that they had obtained a waiver prior to applying for admission. There is also no indication in the record that the Applicant filed an updated waiver application with the Director disclosing this departure and reentry or otherwise indicating that any additional inadmissibility grounds applied.

In [redacted] 2016, subsequent to the grant of the U petition, the Applicant was apprehended by U.S. Customs and Border Protection returning from Mexico without inspection. They were placed in removal proceedings. These proceedings were administratively closed in 2016, and the Applicant then moved to terminate these proceedings in 2019. The Immigration Judge granted the motion and terminated the removal proceedings in July 2019. The Applicant filed the instant U adjustment application in September 2019.

The Director issued a notice of intent to deny (NOID) advising the Applicant that the 2015 entry had rendered them inadmissible under sections 212(a)(9)(B)(i)(II) (departure and attempted readmission after accruing unlawful presence of more than one year) and 212(a)(9)(C)(i)(I) (attempted unlawful reentry after accruing one year of unlawful presence) of the Act. The Director further determined that, because the Applicant remained inadmissible under these grounds when they were admitted as a U nonimmigrant in October 2015, the Applicant was not lawfully admitted to the United States as contemplated by 8 C.F.R. § 245.24(b)(2)(i). The Director separately noted that the Applicant's 2016 departure and reentry terminated the Applicant's U nonimmigrant status, such that they were no longer in U status when applying for permanent residency[1]. After receiving the response to the NOID, the Director denied the U adjustment application.

[1] Because the Applicant's lawful admission in U status is dispositive, we reserve the issue of the Applicant's conduct following the approval of the U petition. Similarly, we reserve the issue of their eligibility for adjustment of status as a matter of discretion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

III. ANALYSIS

Lawful admission, as utilized at 8 C.F.R. § 245.24(b)(2)(i), contemplates both procedural regularity and compliance with substantive legal requirements. *See Matter of Longstaff*, 716 F.2d 1439, 1441-42 (5th Cir. 1983) (holding that the term "lawfully admitted" at section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20), "denotes compliance with substantive legal requirements, not mere procedural regularity . . . ."). An admission is not in compliance with substantive legal requirements if, at the time of admission, the individual was not entitled to it. *See Matter of Koloamatangi*, 23 I&N Dec. 548, 550 (BIA 2003) (holding, likewise in the context of section 101(a)(20) of the Act, that an individual was not "'lawfully' admitted for permanent residence status if, at the time such status was accorded, he or she was not entitled to it" and that the individual is therefore "deemed, ab initio, never to have obtained lawful permanent resident status once [the] original ineligibility . . . is determined in proceedings"); *Injeti v. USCIS*, 737 F.3d 311, 346 (4th Cir. 2013) (adopting the reasoning of *Koloamatangi* in holding that, "to establish . . . lawful admi[ssion, the appellant] must do more than simply show that she was granted LPR status; she must further demonstrate that the grant of that status was 'in substantive compliance with the immigration laws.'").

To establish eligibility for U nonimmigrant status, petitioners must establish that they are admissible to the United States or that any applicable ground of inadmissibility has been waived. 8 C.F.R. § 214.1(a)(3)(i). To meet this burden, petitioners must file a waiver application in conjunction with the U petition requesting waiver of any grounds of inadmissibility. 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv). The waiver application must be accompanied by a "statement signed by [the Petitioner] under penalty of perjury that specifies the applicable ground of inadmissibility, the factual basis for [the] inadmissibility, and reasons for claiming that [the Petitioner] should be granted advanced permission to enter the United States." Form I-192, Instructions for Application for Advance Permission to Enter as a Nonimmigrant (July. 2021 ed.), at 7; *see also* 8 C.F.R. §§ 103.2(a)(1) ("Every form, benefit request, or document must be submitted . . . and executed in accordance with the form instructions . . . . The form's instructions are hereby incorporated into the regulations requiring its submission.") and 214.14(c) (stating that each applicant for U nonimmigrant status must submit a U petition "in accordance with . . . the instructions to" the petition). USCIS has the authority to waive certain grounds of inadmissibility as a matter of discretion. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14).

On appeal, the Applicant argues that their 2016 physical departure and reentry should not be treated as a departure for immigration purposes. The Applicant contends that this departure was involuntary and unintentional, as they were in a state of confusion brought on by prescribed medication. Therefore, the Applicant maintains that they retained valid U status at the time of filing the adjustment application. The Applicant does not address whether they were properly admitted at the time their U petition was granted and does not discuss the impact of the June 2015 reentry.

The Applicant's October 2015 admission in U nonimmigrant status was procedurally regular. However, the Applicant's departure from the United States prior to the approval of the U petition triggered at least one additional inadmissibility ground. The Applicant indicated in the U petition that they entered the United States without inspection in 2003 and had remained in the United States since that time. While the Applicant's exact date of departure is unknown, the record is clear that it occurred at some point after the filing of the U petition and after the Applicant had accrued over one year of

unlawful presence. Therefore, upon departing the United States without advance parole, the Applicant triggered the ground of inadmissibility at section 212(a)(9)(B)(i)(II), commonly referred to as the ten-year bar. To be admitted to the United States following this departure, the Applicant was required to either remain outside the United States for ten years or apply for a waiver of inadmissibility under section 212 of the Act. This waiver request must have been filed prior to the application for reentry. 8 C.F.R. § 212.17(a). The record does not reflect that the Applicant applied for or received such a waiver.

The Applicant remained inadmissible for the ten-year bar at the time the U visa was granted. While the Director waived the Applicant's inadmissibility under section 212(a)(6)(A)(i) of the Act, the applicant did not expressly disclose or acknowledge that they were subject to the ten-year bar at the time of the adjudication of the waiver application and, accordingly, it was not previously waived by the Director. As a result, the Applicant's admission in U nonimmigrant status was not in compliance with substantive legal requirements, they were not entitled to it at the time it was accorded, and they cannot be considered to have been "lawfully admitted to the United States" as contemplated by 8 C.F.R. § 245.24(b)(2)(i).

III. CONCLUSION

On appeal, the Applicant has not overcome the Director's determination that they were not lawfully admitted to the United States in U nonimmigrant status and were consequently ineligible to adjust their status under section 245(m) of the Act and 8 C.F.R. § 245.24(b)(2)(i). The appeal is dismissed.

ORDER: The appeal is dismissed.