U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21655088

DATE: APR. 1, 2022

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks "U-1" nonimmigrant classification under sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Vermont Service Center denied the U petition, concluding that the Petitioner was inadmissible as a suspected controlled substance trafficker and as a nonimmigrant present without admission or parole, under sections 212(a)(2)(C)(i) and 212(a)(6)(A)(i) of the Act, respectively, and was unable to establish that a favorable exercise of discretion for his waiver request was warranted. On appeal, the Petitioner submits a brief and copies of evidence previously contained in the record. Upon de novo review, we will dismiss the appeal.

I. LAW

When adjudicating a U petition, U.S. Citizenship and Immigration Services (USCIS) determines whether a petitioner is inadmissible, and 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). U petitioners bear the burden of establishing 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, an inadmissible U petitioner 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 denial of a waiver application is not appealable. 8 C.F.R. § 212.17(b)(3).

A petitioner must establish that he or she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

The Petitioner, a native and citizen of Mexico, filed the instant U petition in March 2015, and subsequently filed a Form I-192, Application for Advance permission to Enter as a Nonimmigrant (waiver application) in December 2018, requesting a waiver of inadmissibility grounds. In October 2021, the Director denied the waiver and found that the Petitioner was inadmissible under sections 212(a)(2)(C)(i) (suspected controlled substance trafficker) and 212(a)(6)(A)(i) (nonimmigrant present

without admission or parole) of the Act, and a favorable exercise of discretion was not warranted. Consequently, the Director determined the Petitioner was ineligible for U nonimmigrant status as he remained inadmissible to the United States.

On appeal, the Petitioner only contests his inadmissibility as a suspected controlled substance trafficker, under section 212(a)(2)(C)(i) of the Act, and admits the inadmissibility finding that he is a nonimmigrant without admission or parole, under 212(a)(6)(A)(i). Regarding his inadmissibility as a suspected controlled substance trafficker, the Petitioner was arrested in [redacted] 2020 by the Federal Bureau of Investigations (FBI) and, in [redacted] 2020, indicted on charges of conspiracy to distribute controlled substances, possession of controlled substances with intent to distribute, possession of firearms in furtherance of a drug trafficking crime, and alien in possession of firearms. In his previous statements in the record and again on appeal, the Petitioner argues that he was in the process of moving into his new home, "and there were still boxes everywhere." The Petitioner states that his brother, C-C-L-[1], "showed up with his bags and asked to stay with [him] a few days." The Petitioner states that C-C-L- "stayed for a couple weeks and then moved back into [their] mother's home but kept a house key and came by the house on occasion." The Petitioner claims that he, "did not notice illegal drugs or unfamiliar packages or containers in the common areas and think[s], if they had been clearly visible, [he] would have noticed. [He] had no idea these items were in [his] home." The Director's denial discussed the criminal indictment in detail, but the search of the Petitioner's home resulted in the location of quantities of heroin, methamphetamine, fentanyl, and crack cocaine, that led the Petitioner to be indicted on the underlying conspiracy to distribute and intent to distribute charges. Further, eleven firearms were located inside the Petitioner's home. The charges filed against the Petitioner remained pending at the time he filed his appeal. As a result, the Petitioner requests that we hold his appeal in abeyance until the criminal charges are adjudicated; however, the Petitioner does not cite any legal authority requiring us to hold the matter in abeyance. He also contends that he has not been convicted for any controlled substance trafficking offenses, nor has he admitted to any controlled substance trafficking, and he has plead not guilty to all the charges brought against him.[2]

However, contrary to the Petitioner's assertions, a petitioner may be deemed inadmissible under section 212(a)(2)(C) even where there has been no admission or conviction, so long as there is "reason to believe" that the petitioner engaged in proscribed conduct relating to trafficking in a controlled substance. *See Matter of Casillas-Topete*, 25 I&N Dec. 317, 320-21 (BIA 2010). In order for an adjudicator to have sufficient "'reason to believe' that a petitioner has engaged in conduct that renders him or her inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by 'reasonable, substantial, and probative evidence.'" *Matter of Rico*, 16 I&N Dec. 181, 185 (BIA 1977). Here, there is reasonable substantial and probative evidence against the Petitioner, including being found with one kilogram or more of heroin, 50 grams or more of methamphetamine, 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, 400 grams or more of a mixture or substance containing a detectable amount of fentanyl, and 28 grams or more of

[1] We use initials to protect the identity of individuals.

[2] The Director's denial further mentions an incident which took place in [redacted] 2014, where USCIS records indicate that the Petitioner was initially charged with selling heroin by the Drug Enforcement Agency (DEA) in [redacted] The documentation submitted by the Petitioner indicates that the [redacted] Police Department conducted a "narcotics order-up/take-down" of the driver of the vehicle in which the Petitioner was the passenger. USCIS records indicate that the charge against the Petitioner was declined, and the only documentation for this incident submitted by the Petitioner is the State of Washington Police Traffic Collision Report.

a mixture or substance containing a detectable amount of cocaine base in the form of crack cocaine, as well as multiple firearms, in his home. *See id.* The Petitioner has not provided sufficient explanation or evidence, such as the police or arrest records, to substantiate his claims that he was unaware of the contents of the packages found in his home during the police search. Therefore, there is sufficient reason to believe that he engaged in conduct that renders him inadmissible under section 212(a)(2)(C).

On appeal, the Petitioner argues that he is contesting all the charges, has motions pending to dismiss them, and that it is inappropriate for USCIS to rely solely on the indictment to make a determination on his inadmissibility. The Petitioner further states that issuing decisions while his criminal charges are pending is a violation of his due process rights. However, there are no due process rights implicated in the adjudication of a benefits application. *See Lyng v. Payne*, 476 U.S. 926, 942 (1986) (holding that "[w]e have never held that applicants for benefits . . . have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."); *see also Azizi v. Thornburgh*, 908 F.2d 1130, 1134 (2d Cir. 1990) (finding that the Fifth Amendment protects against the deprivation of property rights granted to immigrants, but petitioners do not have an inherent property right in an immigrant visa). The Petitioner's statements alone are not enough to overcome the Director's determination of his inadmissibility in finding sufficient "reason to believe" that the Petitioner was involved in controlled substance trafficking. The Petitioner has not submitted corroborating evidence to substantiate his claims that he was unaware, or that his brother was entirely responsible for the controlled substances and firearms being present in his home.

Our review on appeal is limited to whether the Petitioner is in fact inadmissible to the United States, as determined by the Director, and consequently ineligible for U nonimmigrant status. We do not have the authority to review the Director's discretionary determination or to adjudicate a waiver application. 8 C.F.R. § 212.17(b)(3). As the Petitioner does not contest his grounds of inadmissibility as a nonimmigrant present without admission or parole under 212(a)(6)(A)(i) of the Act, and did not overcome his burden of demonstrating that he is not inadmissible as a suspected controlled substance trafficker, the appeal will be dismissed.

ORDER: The appeal is dismissed.