U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15856945

Date: MAR. 08, 2022

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity at 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 Petitioner's Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that she did not establish her admissibility, as required. The Director likewise denied the Petitioner's corresponding Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), finding that a favorable exercise of discretion was not warranted. The denial of the Petitioner's U petition is now before us on appeal. The Administrative Appeals Office reviews 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 dismiss the appeal.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) determines whether a petitioner is inadmissible—and, if so, on what grounds—when adjudicating a U petition, 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).

A petitioner bears 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, a 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). Although we do not have jurisdiction to review the Director's discretionary denial, we may consider whether the Director's underlying determination of inadmissibility was correct.

II. ANALYSIS

In denying the U petition, the Director noted that the Petitioner entered the United States without inspection along with her minor children in 2002 and that in 2013 she was arrested for possession of a controlled substance for sale. The Director concluded that the Petitioner was inadmissible under the

following sections of the Act: 212(a)(6)(A)(i) for being present in the United States without admission or parole; 212(a)(6)(E)(i) for alien smuggling; and 212(a)(2)(C)(i) as a known or suspected illicit trafficker in any controlled substance. The Director found that since USCIS was unable to conclude that a favorable exercise of discretion was warranted her waiver application was denied, she remained inadmissible, and she was therefore not eligible for a U nonimmigrant status.

In denying the waiver application, the Director determined that the Petitioner's immigration violations stemmed from her illegal entry in 2002 and that she had multiple arrests, including 2007 convictions for possession of a deceptive government identity document and operating a vehicle with no license; a 2010 charge for endangering the health of a child that was dismissed following completion of court ordered parenting classes; and a 2013 dismissed charge for possession of a controlled substance for sale. Regarding the latter charge the Director noted that a complaint filed against the Petitioner stated that she possessed methamphetamine. The Director acknowledged the Petitioner's contention that police arrested her because they found cash in her room, but the Director determined that her statements were conflicting about whether police found a controlled substance in the house, that a declaration from her defense attorney carried no evidentiary weight for immigration purposes, and that there was a lack of evidence about the circumstances of her arrest. The Director surmised that the record showed the Petitioner's deceitful behavior and potential risk of harm to others, and that her positive attributes did not outweigh the seriousness of her arrest history.

On appeal, the Petitioner asserts that the Director's decision was arbitrary and capricious. Regarding inadmissibility for being present without admission or parole, the Petitioner argues that all U visa applicants are without status, most entered the United States without inspection, and legal permanent residents do not need to apply for U visas. She asserts that inadmissibility for smuggling is waivable and that bringing one's children is not a bar. Addressing inadmissibility as a suspected trafficker, the Petitioner argues that finding a reason to believe one had been an illicit controlled substance trafficker in violation of the Act must be based on substantial and probative evidence.[1] She claims that she was arrested by mistake, the charges dismissed, and she was never involved with drugs.

The Petitioner argues that the court order dismissing criminal charges shows they were erroneously lodged against her and maintains that her defense attorney explained that the judge's dismissal of charges with consent of the prosecuting attorney came after it was proven that the Petitioner was not involved in any drug-related scheme and was charged by mistake. The Petitioner recounts that her own statements explained that she sublet a room to her ex-partner's brother and did not reside in the room but that her home comprised of the other rooms where she lived. She contends that there were no inconsistencies in her statements, that her ex-partner's brother was selling drugs and she was arrested because of the officer's confusion, and that money found was determined to have been earned through her job and was returned to her after charges were dismissed.

The Petitioner further contends that the Director's decision did not follow guidance under *Matter of Hranka*, 16 I&N Dec. 491 (BIA 1978) that requires considering risk of harm to society if an applicant is admitted, seriousness of criminal or immigration violations, and the reason for seeking entry. She maintains that she completed required parenting classes and has not recommitted in 10 years, which

[1] The Applicant cites *Rodriguez v. Holder*, 683 F.3d 1164 (9th Cir. 2012).

establishes her rehabilitation, and that her arrest for drug possession was a mistake and resulted in her exoneration. The Petitioner argues that her criminal and immigration violations are not serious and show that she does not pose a risk to anyone.

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. In determining that the Petitioner was inadmissible as a known or suspected illicit trafficker in a controlled substance, the Director found that the record indicated the Petitioner was arrested and charged for possession of a controlled substance for sale. In order for the adjudicator to have sufficient "reason to believe" that an applicant has engaged in conduct that renders them 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).

The Petitioner is identified in a criminal complaint as charged in violation of the California Health and Safety Code with possessing for the purpose of sale a controlled substance, methamphetamine. The Petitioner concedes controlled substances were sold from her house but maintains that it was done by her ex-partner's brother while she was not involved. A court document indicates that the charge against the Petitioner was dismissed on motion by the district attorney and her bail exonerated, but it provides no additional detail about the dismissal, including a specific reason or circumstances leading to the motion of dismissal. The declaration by the defense attorney asserted that a criminal complaint was filed against the Petitioner and others based on a search warrant where the only mention of the Petitioner was as co-owner of a car along with her brother-in-law at the same address. The attorney maintained that in surveillance leading to the search warrant the Petitioner was not seen near the car and that the court exonerated her bail and dismissed the case, adding that "[a]s I recall" the reason for dismissal was that the search warrant was illegal due to lack of evidence connecting the Petitioner to any illegal drug activities. Other than suggesting that the charge was dismissed because of an illegal search warrant, the defense attorney provided no additional specific information about events leading to the charge or to the dismissal. Moreover, the declaration from the defense attorney alone is not sufficient, without additional objective evidence such as from law enforcement, to show that the Petitioner was arrested and charged by error. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988).

The record provides reasonable substantial and probative evidence to give the Director sufficient reason to believe that the Petitioner engaged in conduct that renders her inadmissible under section 212(a)(2)(C). Further, the Director did not deny the waiver application solely on the Petitioner's inadmissibility as a suspected controlled substance trafficker. Rather, the Director also found the Petitioner inadmissible as a nonimmigrant present without admission or parole and for smuggling. Although the Petitioner argues that most U visa applicants entered the United States without inspection and that inadmissibility grounds for smuggling are waivable, she does not otherwise contest those findings of inadmissibility.

As explained above, 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. As the Petitioner does not overcome her burden of demonstrating that she is not inadmissible, the appeal will be dismissed.

The Petitioner has not established that she is admissible to the United States or that the applicable grounds of inadmissibility have been waived. Accordingly, she is ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.