U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21500517

Date: MAR. 31, 2022

Appeal of Nebraska 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 Nebraska Service Center denied the Petitioner's Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner was inadmissible and, as a result, had not established his eligibility for the benefit sought. The matter is now before us on appeal. A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). We review the questions in this matter de novo. *See 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, by a preponderance of the evidence, that he is admissible to the United States or that any applicable ground of inadmissibility has been waived. 8 C.F.R. § 214.1(a)(3)(i); Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). 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. A petitioner may submit any relevant, credible evidence for the agency to consider, however, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner is a citizen of Mexico and filed his U petition in March 2016. In his petition, he stated he entered the United States in October 1996 without being inspected, admitted, or paroled. The Petitioner also filed a Form I-192, Application for Advance Permission to Enter as Non-Immigrant (waiver application). In his waiver application, he stated he entered the United States without being inspected, admitted, or paroled on "multiple" occasions between 1984 and 1989 and was given voluntary departure in September 1996. The U petition and supporting court documentation also evidenced that the Petitioner was arrested in [redacted] 2000 and convicted of a domestic violence related crime, "assault 4th degree." He was sentenced to 30 days in jail (29 days suspended), fined, placed on two years of probation, and issued a no contact order. The Director issued a request for evidence (RFE), within which she noted that records indicated that in 1989 the Petitioner was charged with trespassing and a warrant was issued for his arrest, and in 2018 a fugitive operations warrant of arrest/notice to appear was created by U.S. immigration officials. The Director requested additional evidence regarding the Petitioner's past behavior, criminal activity, and to establish that the Petitioner warranted a favorable exercise of discretion in the adjudication of his waiver application. After acknowledging his response to the RFE, the Director denied the waiver application, determining that the Petitioner was inadmissible to the United States under sections 212(a)(2)(A)(i)(I) (conviction or commission of a crime involving moral turpitude) and 212(a)(6)(A)(i) (noncitizen present without admission or parole) of the Act and did not warrant a favorable exercise of discretion.[1] The Director concurrently denied the U petition, explaining the Petitioner was inadmissible and therefore had not established his eligibility for U nonimmigrant status.

On appeal, the Petitioner argues that the Director erred in finding him inadmissible under section 212(a)(2)(A)(i)(I) of the Act and re-asserts arguments raised below. He states that assault in the fourth degree, even with a domestic violence designation, is not a crime involving moral turpitude under the state of Washington. Further, he asserts that his conviction falls under the petty offense exception, as provided under section 212(a)(2)(A)(ii)(II) of the Act.[2] He asserts that the Director failed to consider the evidence he provided in support of his arguments. While we acknowledge these arguments, the Petitioner does not raise error with the Director's inadmissibility finding under section 212(a)(6)(A)(i) of the Act. For this reason, even if we were to analyze the applicability of section 212(a)(2)(A)(i)(I) of the Act, the Petitioner would still remain inadmissible under 212(a)(6)(A)(i) of the Act. As discussed above, our appellate review is limited to whether the Director's inadmissibility determination was correct; we do not have the authority to review the Director's discretionary determination. Accordingly, the Petitioner has not established that he is admissible to the United States or that all applicable grounds of inadmissibility have been waived.

---

[1] The Petitioner filed a motion to reopen and reconsider the denial of the waiver application with the Director and the motion is currently pending.

[2] Section 212(a)(2)(A)(ii)(II) of the Act provides, in relevant part, that section 212(a)(2)(A)(i)(I) shall not apply to a noncitizen "who committed only one crime if- . . . . maximum penalty possible for the crime of which the [noncitizen] was convicted . . . . did not exceed imprisonment for one year" and if the noncitizen was convicted of such crime, he "was not sentenced to a term of imprisonment in excess of 6 months . . . ."

III. CONCLUSION

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

ORDER: The appeal is dismissed.