U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21798878

Date: MAY 3, 2022

Motion on Administrative Appeals Office 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 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 Petitioner filed motions to reopen and reconsider both the U petition and waiver application before the Director, which were dismissed. The Petitioner appealed the dismissal of the motion on the U petition to our office, which we likewise dismissed. The matter is now before us on a motion to reopen and reconsider. The Petitioner submits a brief reasserting her eligibility. Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

U.S. Citizenship and Immigration Services 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

As discussed in our prior decision, hereby incorporated by reference, the Petitioner, a citizen of Mexico, entered the United States without admission or parole in August 1987 while a Form I-485, Application to Register Permanent Residence or Adjust Status, was pending. She was subsequently granted lawful permanent resident (LPR) status through marriage in 1998. The record further reflects that the Petitioner was arrested by U.S. Customs and Border Patrol (CBP) in [redacted] 2003 and charged with alien smuggling. As a result, she was placed in removal proceedings and her LPR status was revoked the same month.

The Petitioner filed her U petition in April 2015. The Director denied the petition in July 2019, concluding that the Petitioner did not establish her admissibility. The Director concurrently denied the Petitioner's waiver application, finding that she was inadmissible under sections 212(a)(6)(A)(i) (present in the United States without being admitted or paroled), 212(a)(6)(E)(i) (alien smuggling), and 212(a)(7)(B)(i)(I) (nonimmigrant not in possession of a valid passport or other valid entry document) of the Act, and that a favorable exercise of discretion was not warranted.

The following month, the Petitioner filed motions to reopen and reconsider the denial of her U petition and waiver application, and additional evidence of her positive and mitigating equities. The Director dismissed the motion on the waiver application in October 2020, concluding that the Petitioner remained inadmissible under sections 212(a)(6)(A)(i), 212(a)(6)(E)(i), and 212(a)(7)(B)(i)(I) of the Act, and that the record, as supplemented on motion, did not establish that a favorable exercise of discretion was warranted. The Director then likewise dismissed the motion on the Petitioner's U petition, referencing the dismissal of the motion on the underlying waiver application. The Petitioner filed an appeal in November 2020, which we dismissed because she did not establish error in the Director's dismissal of her motion, nor did she contest the Director's conclusion that she remained inadmissible or that the applicable grounds of inadmissibility had been waived.

On motion, the Petitioner continues to contend that the Director erred in denying her waiver application on discretionary grounds. Specifically, she argues that the Director should not have considered her entry without admission or parole in August 1987 as an adverse factor because she was later granted LPR status in 1998. She further argues that the Director should also not have considered her failure to disclose all of her grounds of inadmissibility as an adverse factor because she submitted her initial filing "with the understanding that the record would be supplemented in order to address her grounds of inadmissibility and to submit evidence of positive equities."

We acknowledge the Petitioner's arguments regarding the discretionary denial of her waiver application. However, as stated both above and in our prior decision on appeal, our review of the waiver application is limited to whether the Petitioner is in fact inadmissible to the United States and, if so, on what grounds. We do not have the authority to review the Director's discretionary determination. In this case, the Petitioner does not contest the stated grounds of inadmissibility and has not presented any arguments or evidence that the Director erred in finding her inadmissible to the United States.

III. CONCLUSION

The Petitioner has not submitted evidence of new facts pertaining to her eligibility, and she does not allege that our previous decision was based on an incorrect application of law or USCIS policy. Moreover, 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. The U petition will therefore remain denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.