U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22718220

Date: NOV. 08, 2022

Motion on Administrative Appeals Office 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 he did not establish his admissibility, as required. The Director likewise denied the Petitioner's corresponding Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), to waive the applicable grounds of inadmissibility, finding that a favorable exercise of discretion was not warranted. We dismissed the Petitioner's appeal, and the matter is now before us on a motion to reconsider. Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id*.

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 of the waiver application, we may consider whether the Director's underlying determination of inadmissibility was correct.

II. ANALYSIS

The Petitioner, a native and citizen of Mexico, acknowledges entering the United States without inspection, authorization, or parole in 1999. The record further reflects that the Petitioner was arrested on several occasions for charges relating to a variety of offenses, including one resulting in convictions for felony battery under Florida Statutes section 784.041, false name to law enforcement under Florida Statutes section 901.36(1), and driving under the influence (DUI) offenses under Florida Statutes sections 316.193(1) and 316.193(3)(a)(b)(c)(1).

In denying the U petition, the Director concluded that the Petitioner was inadmissible under sections 212(a)(2)(A)(i)(I) (crimes involving moral turpitude) and 212(a)(6)(A)(i) (present in the United States without being admitted or paroled) of the Act and his accompanying waiver application seeking to waive the applicable grounds of inadmissibility had been denied as a matter of discretion.

In our previous decision, incorporated here by reference, we determined that the Petitioner's appeal did not contest any of the grounds of inadmissibility determined to be applicable by the Director or otherwise argue that the Director erred in finding him inadmissible to the United States. We noted that our appellate review is limited to whether the Director's inadmissibility determination was correct, and further that we do not have the authority to review the Director's discretionary determination. As such, we dismissed the Petitioner's appeal. On motion, the Petitioner submits a brief and additional evidence.

With his motion to reconsider, the Petitioner argues that our prior decision was incorrect in stating that he did not contest the grounds of inadmissibility with his appeal. In our review of the record, we note that the Petitioner's appeal brief only stated that his conviction for felony battery "was precipitated by his desire to break a fight between his brother and another man. As the incidents are far too remote, [the Petitioner] respectfully submit[s] that USCIS erroneously and unnecessarily put [his] moral character in question without balancing his reformation and positive equities in the aggregate, and as such the USCIS abused its discretion." The remainder of the Petitioner's appeal submission focused on the Director's discretionary determination. We note again that our authority is limited to reviewing the Director's determinations as to the Petitioner's inadmissibility to the United States, and we are unable to review the Director's discretionary determination on the Petitioner's waiver application.

The Petitioner further contends that the Administrative Appeals Office has previously determined that applicants for adjustment of status based on approved U nonimmigrant petitions with seemingly more severe criminal histories warranted a favorable discretionary determination; however, these non-precedent decisions relate to a different immigration benefit than the one sought by the Petitioner, and cannot be considered in our review of the Director's determinations regarding the Petitioner's inadmissibility to the United States.

The Petitioner again states that his only involvement in the 2005 incident was attempting to intervene and stop his brother from a fight. The Petitioner cites *Matter of Jean*, I&N Dec. 373 (A.G. 2002), which held that USCIS was directed to consider the nature of the criminal offense that rendered him inadmissible in the first place; however, this decision relates to discretionary determinations and waivers, and does not relate to determining if an applicant or petitioner is inadmissible in the first instance.

While the Petitioner argues that his felony battery conviction was not a "violent or dangerous offense" and states that it should be considered a "petty offense" based on his ultimate sentence of 30 days in county jail, we note that the petty offense exception, found at section 212(a)(2)(A)(ii)(II) of the Act, requires that the *maximum* imprisonment possible for the crime was less than one year *and* the noncitizen was sentenced to imprisonment for less than 6 months (regardless of how long the applicant was actually imprisoned) (emphasis added). Here, in our review of the applicable Florida statute in place at the time of the Petitioner's conviction under section 784.041, a third-degree felony, the maximum imprisonment possible for the crime was 5 years, and as such, does not qualify for the petty offense exception.[1]

The remainder of the arguments and evidence submitted by the Petitioner with his motion to reconsider focus on the exercise of discretion. As we have noted, here and on appeal, we do not have the authority to review the Director's discretionary determination. As such, we dismiss the Petitioner's motion to reconsider, as he has not established that our prior decision was based on an incorrect application of law, or that the Director erred in determining that he was inadmissible under section 212(a)(2)(A)(i)(I) (crimes involving moral turpitude) of the Act.[2]

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 motion to reconsider is dismissed.

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[1] *The 2005 Florida Statutes*, Title XLVI, chapter 775.082 (3)(a)(4)(d), http://www.leg.state.fl.us/STATUTES/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0775/SEC082.HTM&Title=-%3E2005-%3ECh0775-%3ESection%20082#0775.082.

[2] The Petitioner again does not contest that he is inadmissible under section 212(a)(6)(A)(i) (present in the United States without being admitted or paroled) of the Act; however, he argues that this ground of inadmissibility is commonly waived.