U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26349301

Date: MAY 18, 2023

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 denied the Form I-918, Petition for U Nonimmigrant Status (U petition) based upon the denial of the Petitioner's Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application).[1] The denial of the Petitioner's U petition is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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, as explained below, we will remand the matter to the Director for the entry of a new decision.

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).

The record demonstrates that in March 2011, the Petitioner was placed in removal proceedings before the Immigration Court by virtue of a Notice to Appear, which charged him as inadmissible pursuant to section 212(a)(6)(A)(i) of the Act, for presence in the United States without being admitted or parole.

On February 28, 2022, the Director denied the Petitioner's waiver application, finding that the Petitioner was inadmissible pursuant to sections 212(a)(6)(A)(i) of the Act, as a noncitizen present without admission or parole, and 212(a)(7)(B)(i)(I) of the Act, as a nonimmigrant without a valid passport, and concluding that the positive and mitigating equities present in his case did not outweigh the adverse factors, including "an arrest history that includes gang activity" such that he warranted a

[1] Both denials were subsequently affirmed by the Director on motion to reconsider. The Director determined that the "grounds of denial have not been overcome."

waiver of the applicable grounds of inadmissibility as a matter of discretion. Consequently, the Petitioner's U petition was denied, as he had not established his admissibility, as required.

On appeal, the Petitioner maintains that he is eligible for U-1 nonimmigrant classification, as an Immigration Judge granted the Petitioner's request for a waiver of inadmissibility under section 212(d)(3) of the Act for his inadmissibility pursuant to section 212(a)(6)(A)(i) of the Act.[2] In support, the Petitioner submits an Amended Order of the Immigration Judge of the Chicago Immigration Court, dated February 27, 2023, detailing that the Petitioner has been granted a waiver under section 212(d)(3) of the Act.[3]

With this new documentation provided by the Petitioner on appeal, we will remand the matter to the Director to consider whether the record now demonstrates that the inadmissibility grounds applicable to the Petitioner have been waived by the Immigration Judge. If the Director determines that the Petitioner's inadmissibility grounds have been waived, the Director shall determine the Petitioner's eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[2] In 2016, the Board of Immigration Appeals (the Board) issued *Matter of Khan,* 26 I&N Dec. 797 (BIA 2016), which determined that Immigration Judges do not have authority to adjudicate a request for a waiver of inadmissibility under section 212(d)(3)(A) of the Act by a petitioner for U nonimmigrant status. The Seventh Circuit, in *Baez-Sanchez v. Sessions*, considered whether it would follow *Khan*, and ultimately vacated the Board's determination and remanded for the Board to provide further explanation for its holding. 872 F.3d 854, 855-57 (7th Cir. 2017). The Board's determination pursuant to *Baez-Sanchez* remains pending.

[3] We note that the Petitioner has not submitted documentation on appeal, such as the court transcript, to establish that the Immigration Judge considered and waived all inadmissibility grounds the Director determined applied to the Petitioner. The ground of removability referenced in the Immigration Judge's amended order, as noted above, is "212(a)(6)(A)(i)" of the Act.