



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 8058184

Date: MAR. 04, 2021

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status

The Applicant seeks to become a lawful permanent resident (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on his “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status (adjustment application), concluding that the Applicant was ineligible to adjust status because he had not been lawfully admitted to the United States. The matter is now before us on appeal. Upon de novo review, as explained below, we will dismiss the appeal.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant “admitted into the United States . . . under section 101(a)(15)(U) [of the Act]” to that of an LPR provided the applicant “has been physically present in the United States for a continuous period of at least 3 years since the date of admission” as a U nonimmigrant and otherwise establishes that their continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m)(1) of the Act. An applicant must establish that they were “lawfully admitted to the United States” as a U nonimmigrant and continue to hold such status at the time of their adjustment of status application. 8 C.F.R. § 245.24(b)(2)(i), (ii); see also 8 C.F.R. § 214.1(3)(i) (“Every nonimmigrant alien who applies for admission to . . . the United States, must establish that he or she is admissible to the United States, or that any ground of inadmissibility has been waived under section 212(d)(3) of the Act.”). The regulations make clear that all U adjustment applicants must submit, among other things, evidence they were lawfully admitted in U nonimmigrant status. 8 C.F.R. §§ 245.24(d)(7). An applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b); Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010).

II. ANALYSIS

The Applicant is a citizen of Albania who was granted U-4 nonimmigrant status in October of 2014 as the parent of a victim of a qualifying crime. He filed the instant adjustment application in November of 2017 in which he disclosed he had submitted fraudulent or counterfeit documentation to a U.S.

Government official to obtain or attempt to obtain an immigration benefit, and had lied about, concealed, or misrepresented information on an application or petition to obtain a visa, other documentation required for entry into the United States, admission to the United States, or any other kind of immigration benefit. As discussed more thoroughly below, after issuing a request for evidence (RFE) and considering the Applicant's response, the Director denied the adjustment application, concluding that the Applicant was ineligible to adjust status because he had not been lawfully admitted to the United States as a U nonimmigrant. The Director specified that an applicant for U nonimmigrant status must establish either that they are admissible to the United States, or that any ground of inadmissibility has been waived. The Director found that the Applicant, who admitted paying for a false visa to enter the United States using the name [REDACTED] had not previously disclosed the fraud or willful misrepresentation on either his Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient, or his Form I-192, Application for Advance Permission to Enter as Nonimmigrant. The Director explained that because the Applicant remained inadmissible when he was admitted as a U nonimmigrant, his admission as a U nonimmigrant was not lawful, and as such, the Applicant was ineligible to adjust status.

On appeal, the Applicant contends he disclosed he used the name [REDACTED] on his Form I-918A, and that he stated he "entered the U.S. without a proper visa" on his Form I-192. He argues that the Director's denial defies logic considering he disclosed the false name that he used, disclosed that he did not enter the country with a lawful visa, and was granted a waiver for his unlawful entry. Considering the record in its entirety, for the following reasons, we disagree with the Applicant's contentions.

A. The Form I-918A

The Applicant's daughter filed a Form I-918A on the Applicant's behalf in December of 2012. The Applicant signed the petition, attesting under penalty of perjury that the information provided in the petition was true and correct. In part 3 of the petition, for "Other Names Used," the Applicant listed [REDACTED]. However, in part 4, question 23, he indicated "no" when asked if he had "ever, by fraud or willful misrepresentation of a material fact, sought to procure, or procured, a visa or other documentation, for entry into the United States or any immigration benefit?"

The Director issued a request for evidence (RFE) in February of 2014, stating that the Applicant appeared to be inadmissible under section 212(a)(6)(A)(i) of the Act as a noncitizen present without being admitted, and section 212(a)(7)(B)(i)(I) as a nonimmigrant without a valid passport. The Director stated that the record showed that the Applicant "entered the United States without inspection and that [he] did not have a valid passport at the time of filing the [Form I-918A, and therefore,] cannot be found eligible to receive U nonimmigrant status unless [USCIS] waives the ground of inadmissibility." The Director instructed the Applicant to submit a Form I-192 if he had entered without inspection, but specified that if he entered the United States with inspection, to submit a legible photocopy of both sides of his Form I-94, Arrival/Departure Record.

The record does not contain a response to this RFE and the Applicant did not submit a legible photocopy of his Form I-94 despite entering with inspection. Rather, in April of 2014, the Applicant filed a Form I-192.

The Applicant's false attestation in part 4, question 23 of the Form I-918A is significant in several ways. Not only did the Applicant make a false statement under penalty of perjury that he did not enter the United States by fraud or willful misrepresentation of a material fact, but his attestation led to an RFE that was focused on sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(I) as the grounds of inadmissibility. Despite the RFE's clear statements regarding the Applicant entering the United States without inspection, at no time did the Applicant attempt to correct this mistake. Rather, the Applicant continued to perpetrate the falsehood that he entered without inspection by submitting a Form I-192 instead of submitting a copy of his Form I-94 for his entry with inspection, as instructed in the RFE.

B. The Form I-192

According to page 7 of the form instructions for Form I-192, applicants "must provide a statement signed by you under penalty of perjury that specifies the applicable ground of inadmissibility, the factual basis for your inadmissibility, and reasons for claiming that you should be granted advance permission to enter the United States." In response to question 12, which states, "I believe that I may be inadmissible to the United States for the following reason(s) and no others," the Applicant stated only:

I entered the U.S. without a proper visa. I have remained in the U.S. without authorization. I have been employed without authorization.

In October of 2014, the Applicant's Form I-192 was approved.

Although the Applicant admitted he entered the United States without a proper visa, he did not specify the applicable ground of inadmissibility as required by the form instructions. Form instructions have the weight of regulations. See 8 C.F.R. § 103.2(a)(1) ("Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission."). Moreover, the approval of the Form I-192 specified that the grounds of inadmissibility were for sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(I) of the Act. As with his Form I-918A, the Applicant made no attempt to correct the Director's erroneous findings regarding the grounds of inadmissibility applicable to his case.

C. The Form I-485

In November of 2017, the Applicant filed the instant Form I-485 that is currently before us. As he did in his Form I-918A, he disclosed he had previously used the name [redacted]. However, for the first time, the Applicant disclosed that he used a fraudulent visa to enter the United States. Specifically, in part 8, questions 64 and 65, he responded "yes" to the questions: "Have you EVER submitted fraudulent or counterfeit documentation to any U.S. Government official to obtain or attempt to obtain any immigration benefit, including a visa or entry into the United States?" and "Have you EVER lied about, concealed, or misrepresented any information on an application or petition to obtain a visa, other documentation required for entry into the United States, admission to the United States, or any other kind of immigration benefit?" As additional information, the Applicant indicated, "As I disclosed in the Form I-192 I entered the United States without a proper visa."

The Director issued an RFE, stating that the Applicant may have entered the United States using false or fraudulent documents and may, therefore, require an additional ground of inadmissibility to be waived. The Director requested, among other things: a detailed explanation of the Applicant's entry into the United States; any alias names and dates of birth used to enter the country; an explanation of how a visa, if any, was obtained; and copies of any admission documents or stamped passports. The Applicant responded to the RFE with additional documentation. In pertinent part, the Applicant submitted an affidavit, explaining that in 2001, he and his spouse felt insecure in Albania due to dangerous conditions and that it was virtually impossible to obtain a lawful visa to leave Albania. He attested that he paid an individual for four false visas, that he used the name [REDACTED], and that their family fled Albania for the United States. He stated they presented their visas and were admitted to the United States in Boston in 2001. He did not indicate his alias' date of birth that was used to enter the country, or provide copies of any admission documents or stamped passports, as requested.

The Applicant has not met his burden of establishing by a preponderance of the evidence that he was lawfully admitted as a U nonimmigrant. As expressly indicated on the approved Form I-192, the Applicant was granted a waiver for inadmissibility under sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(I) of the Act only. The Applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit and he has not received a waiver for this separate ground of inadmissibility. Because the Applicant has not established that he was lawfully admitted in U nonimmigrant status, he is ineligible to adjust his status to that of an LPR. Section 245(m)(1) of the Act; 8 C.F.R. §§ 245.24(b)(i) and (d)(7). The application will therefore remain denied.

ORDER: The appeal is dismissed.