U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6584638

Date: NOV. 30, 2020

Appeal of Vermont Service Center Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification as a victim of human trafficking under Immigration and Nationality Act (the Act) sections 101(a)(15)(T) and 214(o), 8 U.S.C. §§ 1101(a)(15)(T) and 1184(o). The Director of the Vermont Service Center denied the Form I-914, Application for T Nonimmigrant Status (T application), because the record established the Applicant's inadmissibility and her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (waiver application), requesting a waiver of the grounds of inadmissibility, had been denied. On appeal, the Applicant reasserts her eligibility. 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

Section 212(d)(13) of the Act requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a T application, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The Applicant bears the burden of establishing that he or she is admissible to the United States or that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). Applicants who are inadmissible to the United States must file a T waiver application in conjunction with a T application in order to waive any ground of inadmissibility. 8 C.F.R. §§ 212.16, 214.11(d)(2)(iii). There is no appeal of a decision to deny a waiver. 8 C.F.R. § 212.16(c). Although the regulations do not provide for appellate review of the Director's discretionary denial of a waiver application filed in T proceedings, we may still consider whether the Director was correct in finding the Applicant inadmissible to the United States and, therefore, requiring an approved waiver application.

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.11(d)(5); Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). An applicant may submit any credible evidence for us to consider in our de novo review; however, we determine, in our sole discretion, the evidentiary value to give that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

The Applicant last entered the United States in October 1999 without inspection, admission, or parole. She filed her T application in January 2018. The Director denied the T application because the record demonstrated that the Applicant was inadmissible to the United States under sections 212(a)(2)(A)(i) (crime involving moral turpitude), 212(a)(6)(A)(i) (entry without inspection), and 212(a)(7)(B)(i)(I) (no valid passport) of the Act, and her application to waive the grounds of inadmissibility had been denied.

On appeal, the Applicant does not contest the grounds of inadmissibility, and the record supports the conclusion that she is inadmissible. Instead, she argues that the Director misapplied the law relating to how USCIS should apply its discretion and did not consider the connection between the Applicant's grounds of inadmissibility and her trafficking victimization. She contends that this connection "mitigate[s] the seriousness of [the] violations," shows that she is "not a harm to society," and has "compelling reasons for wishing to stay in the United States." She submits supporting letters and a fact sheet from the U.S. Department of State. However, these factors are relevant to the Applicant's request for a waiver of inadmissibility as a matter of discretion, of which there is no appeal. 8 C.F.R. § 212.16(c). We have authority to consider whether the Director was correct in finding the Applicant inadmissible to the United States and, therefore, requiring an approved waiver application, but not to review whether the Director improperly denied the waiver.

The Applicant also asserts on appeal that an Immigration Judge waived her grounds of inadmissibility, and that she is therefore eligible for T nonimmigrant status. She submits a [redacted] 2018 order from an Immigration Judge in [redacted] Illinois, waiving the Applicant's inadmissibility under sections 212(a)(2)(A)(i) (crime involving moral turpitude), 212(a)(6)(A)(i) (entry without inspection), 212(a)(7)(B)(i)(I) (no valid passport), and 212(a)(7)(B)(i) (smuggling) of the Act. She asserts that she requested that the waiver apply to both her pending T application and U petition pursuant to L.D.G. v. Holder, 744 F.3d 1022 (7th Cir. 2014), and that the Immigration Judge "granted . . . her waiver of inadmissibility under INA § 212(d)(3)(A) to allow her to pursue the T and U visas with USCIS . . . ." She further notes that the Department of Homeland Security did not reserve the right to appeal the decision, "demonstrating their agreement that [she] merits a waiver under INA 212(d)(3)(A)."

In the case the Applicant cites in support of her argument, L.D.G. v. Holder, the U.S. Court of Appeals for the Seventh Circuit held that Immigration Judges, in addition to USCIS, may grant inadmissibility waivers under section 212(d)(3)(A)(ii) of the Act to aliens pursuing U nonimmigrant classification. 744 F.3d at 1031. The court did not address whether Immigration Judges may also grant inadmissibility waivers to aliens seeking T nonimmigrant status. Section 212(d)(13) of the Act specifies that the "Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(T)," and USCIS may grant that application in its discretion. 8 C.F.R. § 212.16(b). The Applicant does not cite any legal authority to show that an Immigration Judge has authority to grant a waiver of inadmissibility under section 212(d)(13) of the Act for T applicants. Accordingly, the Applicant is inadmissible on the grounds identified by the Director and her waiver application remains denied. Therefore, she has not established eligibility for T nonimmigrant status.

ORDER: The appeal is dismissed.