U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-M-A-

DATE: NOV. 9, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as an alien victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The Petitioner appealed the decision, which we dismissed. The matter is now before us on a motion to reopen and a motion to reconsider. The motions will be denied.

The Director denied the Form I-918, Petition for U Nonimmigrant Status, because the Petitioner was inadmissible to the United States and his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, to waive the grounds of inadmissibility was denied. The Petitioner's brief does not contest his inadmissibility on the stated grounds, and instead, states that the Petitioner submitted an additional Form I-192 which would cure the problem of his inadmissibility and render him eligible for U nonimmigrant status. In addition, he states that he has presented evidence to excuse past behavior, has been rehabilitated, and has other equities weighing in favor of the Director exercising discretion to grant a waiver.

I. APPLICABLE LAW

Section 101(a)(15)(U) of the Act provides for U-1 nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. Section 212(d)(14) of the Act requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The Petitioner bears the burden of establishing that he is admissible to the United States or that any grounds of inadmissibility have been waived. *See* 8 C.F.R § 214.1(a)(3)(i).

For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in conjunction with a Form I-918 in order to waive any ground of inadmissibility. The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of a decision to deny a waiver." The only issue that may come before us is whether the Director was correct in finding the Petitioner inadmissible to the United States and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

(2) Criminal and Related Grounds

(A) Conviction of Certain Crimes

(i) In General.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of – . . .

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime,

. . .

(6) Illegal Entrants and Immigration Violators

(A) Aliens Present Without Permission or Parole

(i) In General.-An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

. . .

(9)ALIENS PREVIOUSLY REMOVED.- . . .

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States is inadmissible., . . .

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year. . . .

II. FACTS AND PROCEDURAL HISTORY

As the facts and procedural history were adequately documented in our prior decision, we repeat only certain facts as necessary. On appeal, the Petitioner did not dispute that he is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I), 212(a)(6)(A)(i), 212(a)(9)(B)(i)(II), and 212(a)(C)(i)(I) of the Act, but states that the Director should exercise her discretion in granting a waiver as his criminal acts occurred as a result of the qualifying criminal activity, those activities have ceased, and his United States citizen wife would be adversely affected by his removal. He, therefore, requests that we not adjudicate the appeal while his second Form I-192 is pending before the Director.

III. ANALYSIS

All nonimmigrants, including U nonimmigrants, must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R § 214.1(a)(3)(i). The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of a decision to deny a waiver." As we do not have jurisdiction to review whether the Director properly denied the Form I-192, the only issue before us is whether the Director was correct in finding the Petitioner inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(f)(3)(ii).

Criminal court documents in the record show that the Petitioner was convicted of criminal trespassing on 2001; driving under the influence pursuant to Tennessee Code Annotated (TCA) § 55-10-401 on 2004; vandalism under TCA § 39-14-408 and domestic assault under TCA § 39-13-111 on , 2005; driving on a revoked license pursuant to TCA § 55-50-351 on , 2005; and driving under the influence pursuant to TCA § 55-10-401 on March 1, 2006. Under 8 C.F.R § 214.1(a)(3)(i), the burden is on the Petitioner to show that he is admissible to the United States, and he does not contest that he is inadmissible under section 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude) of the Act.

In addition, the Director found the Petitioner inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) 212(a)(9)(B)(i)(II) (unlawful presence after being removed), 212(a)(9)(C)(i)(I) (unlawful presence) of the Act. The Petitioner admits that he entered the United States in 1997 without admission, inspection, or parole. As the Petitioner does not claim to have been "admitted" to the United States under a lawful status, the Petitioner is inadmissible to the United States pursuant to section 212(a)(6)(A)(i) of the Act for being present without being admitted or paroled. The Petitioner states that he was removed by Customs and Border Patrol in 2004 and re-entered the United States without admission, inspection, or parole on July 1, 2004. As the Petitioner admits to having re-entered the United States after having been removed and remaining in the U.S. for longer than one year, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) and 212(a)(9)(C)(i)(I).

The Petitioner does not contest the grounds or basis for inadmissibility but, instead, asserts that the Director should exercise discretion in granting the Form I-192. Although the Director has not issued

a decision regarding the second Form I-192 filed by the Petitioner, we have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918. 8 C.F.R. § 212.17(b)(3).

IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has not established that he is admissible to the United States or that his grounds of inadmissibility under sections 212(a)(2)(A)(i)(II) (conviction of a crime involving moral turpitude), 212(a)(6)(A)(i) (present without admission or parole), 212(a)(9)(B)(i)(I) (unlawful presence after previous removal), 212(a)(9)(C)(i)(I) (unlawful presence) of the Act have been waived. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(ii) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of E-M-A-*, ID# 15108 (AAO Nov. 9, 2015)