U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-M-G-

DATE: APR. 8, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) §§ 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, denied the petition. The Director concluded that the petition was not approvable because the record established the Petitioner's inadmissibility and his Form I-192, Application for Advance Permission to Enter as Nonimmigrant, requesting a waiver of the grounds of inadmissibility, had been denied.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that the Director made a factual error on his Form I-192, which he contends merits a favorable exercise of discretion.

Upon *de novo* review, we will dismiss the appeal.

I. APPLICABLE LAW

Section 101(a)(15)(U)(i) of the Act provides for U 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, Petition for U Nonimmigrant Status, 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 or she 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).

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

(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, or

(II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

is inadmissible.

. . . .

(C) Controlled Substance Traffickers

Any alien who the consular officer or the Attorney General knows or has reason to believe –

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; ...

is inadmissible.

. . . .

(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

(A) Certain Aliens Previously Removed

(i) Arriving Aliens . . . .

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or
(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(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, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Mexico who claims to have last entered the United States on February 23, 2010, without admission, inspection, or parole. The record indicates that the Petitioner had previously entered the United States in March 2003. On [redacted] 2005, the Petitioner was convicted of cultivating marijuana, a felony, in violation of section 11358 of the California Health and Safety Code and was sentenced to 90 days of imprisonment and 24 months of formal probation. A Notice to Appear was thereafter issued against the Petitioner on [redacted] 2006, placing him into removal proceedings. On that same date, the Petitioner was removed from the United States pursuant to a stipulated order of removal issued by an immigration judge.

The Petitioner filed the instant Form I-918 on December 19, 2011, with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, and a Form I-192. The Director denied the Petitioner's Form I-192, finding the Petitioner inadmissible under sections 212(a)(2)(A)(i)(I) (crime involving moral turpitude), 212(a)(2)(A)(i)(II) (controlled substance violation), 212(a)(2)(C)(i) (controlled substance trafficker), 212(a)(6)(A)(i) (present without admission or inspection), 212(a)(9)(A)(ii)[1] (previously ordered removed and seeking admission within 10 years), 212(a)(9)(B)(i)(II) (unlawfully present for one year or more and seeks admission within 10 years of departure or removal), and 212(a)(9)(C)(i)(I)[2] (unlawfully present for more than one year in the aggregate and enters without admission) of the Act and concluding that the Petitioner had not shown that he warranted a favorable exercise of discretion. As the Petitioner was found inadmissible and his Form I-192 was denied, the Director consequently also denied the Petitioner's Form I-918. The Petitioner filed the instant appeal of the denial of his Form I-918.

III. ANALYSIS

A full review of the record, including the evidence submitted on appeal, does not establish the Petitioner's eligibility. The Petitioner's claims and the evidence submitted on appeal do not overcome the Director's ground for denial. The appeal will be dismissed for the following reasons.

Section 212(d)(14) of the Act requires 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. All 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). For individuals seeking U nonimmigrant status who are inadmissible to the

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[1] The Director's decision appears to inadvertently indicate that the Petitioner was inadmissible under section 212(a)(9)(A)(i) of the Act, which relates to arriving aliens who seek admission within 10 years of having previously been ordered removed or having departed the United States while an outstanding order of removal was pending. This provision is inapplicable to the Petitioner who is not an arriving alien.

[2] The record indicates that the Petitioner is also inadmissible under section 212(a)(9)(C)(i)(II) for having entered the United States without admission or inspection after having been previously ordered removed. In addition, the Petitioner also appears inadmissible pursuant to section 212(a)(7)(A)(i) of the Act (not in possession of valid unexpired passport), as a copy of the Petitioner's passport in the record reflects that it is expired.

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." As we do not have jurisdiction to review whether the Director properly denied the Form I-192, we do not consider whether approval of the Form I-192 should have been granted. 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).

The Petitioner does not contest his inadmissibility on the grounds identified by the Director, and the record establishes that he is inadmissible to the United States.[3] On appeal, the Petitioner asserts instead that his Form I-192 merits a favorable exercise of discretion and that the Director erroneously relied on a factual mistake in denying the Form I-192 insofar as the decision below referenced the Petitioner as having two convictions for controlled substance violations.[4] However, as noted, the Director denied the Petitioner's application for a waiver of inadmissibility, and we have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918. *See* 8 C.F.R. § 212.17(b)(3). Accordingly, the Petitioner has not established that he is admissible to the United States or that the grounds of inadmissibility have been waived. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

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). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of P-M-G-*, ID# 16130 (AAO Apr. 8, 2016)

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[3] We do not specifically reach the issue of whether the Director was correct in concluding that the Petitioner's conviction rendered him inadmissible under sections 212(a)(2)(A)(i)(I) (crime involving moral turpitude) and 212(a)(2)(C)(i) (controlled substance trafficker) of the Act, as the Petitioner does not contest his inadmissibility and the record establishes his inadmissibility on the other stated grounds. *See also supra* note 2.

[4] Our review indicates that the Director noted only that the Petitioner's two arrests in 2004 and 2005 were related, which the Petitioner himself appears to assert on appeal.