U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-C-D-E-

DATE: AUG. 24, 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) sections 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 Petitioner was inadmissible to the United States and, because of the serious nature of the Petitioner's drug trafficking conviction, she did not merit a favorable exercise of discretion to waive the grounds of inadmissibility. The Petitioner filed a motion to reopen and a motion to reconsider the Director's denial. The Petitioner submitted a psychological evaluation and claimed that the evidence showed that she was not a menace to society. The Director concluded that the evidence did not establish that the grounds of inadmissibility should be waived as a matter of discretion.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner does not contest her inadmissibility. The Petitioner claims that she is fully rehabilitated, that her minor daughter, who was sexually assaulted by the Petitioner's ex-husband, needs her to stay in the United States, and that she fears returning to Mexico because her former boyfriend who is a member of the Mexican police, has threatened to kill her. She requests a favorable exercise of discretion.

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

I. APPLICABLE LAW

Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires United States Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918, Petition for U Nonimmigrant Status (U petition), and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion which otherwise would preclude the benefit. The Petitioner bears the burden of establishing that she is admissible to the United States. *See* 8 C.F.R § 214.1(a)(3)(i).

For persons 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, Application for Advance Permission to Enter as Nonimmigrant (waiver application), in conjunction with the U petition in order to waive any applicable ground(s) 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 such, we do not have jurisdiction to review whether the Director properly denied the waiver application, and thus do not consider whether the Petitioner does or does not merit a waiver. We do have jurisdiction, however, to consider whether the Director was correct in finding the Petitioner inadmissible to the United States in the first instance and, therefore, whether a waiver was required.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

The Petitioner is a citizen of Mexico. On June 2, 1999, the Superior Court of California, [redacted] convicted the Petitioner of possession of 27 pounds of marijuana for sale, in violation of California Health and Safety Code section 11359. The Court sentenced her to 36 days in prison, three years of probation, and payment of restitution and fees. The Petitioner was placed into removal proceedings under section 240 of the Act and was ordered removed. On [redacted] 1999, the Petitioner was removed from the United States. The Petitioner reentered the United States without inspection, admission or parole, and U.S. Immigration and Customs Enforcement reinstated the prior order of removal under section 241(a)(5) of the Act.[1] The Petitioner filed the U petition seeking U-1 status as a victim of abusive sexual contact and sexual assault against her [redacted] year old daughter.

The Director determined that the Petitioner met all of the eligibility criteria for U-1 status except admissibility to the United States, and denied the U petition. The Director determined that the Petitioner was inadmissible to the United States under section 212(a)(2)(A)(i)(II) (controlled substance violation), section 212(a)(2)(C) (controlled substance trafficker), and section 212(a)(6)(A)(i) (present without admission or parole). The Director concluded that the Petitioner did not merit a favorable exercise of discretion to waive the inadmissibility grounds.

On appeal, the Petitioner does not contest her inadmissibility. Our review of the record, as supplemented on appeal, is limited to whether or not the Petitioner is inadmissible and therefore requires a waiver of the grounds of inadmissibility before she can be granted U-1 nonimmigrant status. The Petitioner's statements on appeal relate only to factors that the Director would consider when determining whether to exercise her discretion favorably to approve the Petitioner's waiver

[1] Upon application for further relief, the Petitioner was referred to the Immigration Court. The final status of those proceedings is not clear from the record.

application. The Petitioner has not presented any arguments or evidence that the Director erred in finding her inadmissible to the United States and therefore requiring an approved waiver. As we have no jurisdiction to consider the Director's decision on the waiver application, we must dismiss the appeal.

Upon *de novo* review, we further conclude that the Petitioner is not eligible for the U-1 nonimmigrant classification because she is not a victim of qualifying criminal activity. The regulation at 8 C.F.R. § 214.14(a)(14) states that a victim of qualifying criminal activity is "an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity." The spouse and children of the direct victim, or the parents of a direct victim who is under 21 years of age, will also be considered victims of qualifying criminal activity if the direct victim is deceased due to murder or manslaughter. 8 C.F.R. § 214.14(a)(14)(i). In the instant matter, the direct victim of criminal activity is the Petitioner's minor daughter, who is not deceased. The record indicates that the Petitioner did not witness the sexual assault, and she does not claim that she was a bystander to the criminal activity perpetrated against her daughter. The Petitioner has not established that she suffered direct and proximate harm as a result of the sexual abuse of her daughter, or that she is a victim of qualifying criminal activity. For this additional reason, the U petition may not be approved.

Upon further *de novo* review, we also conclude that the Petitioner is not eligible for the U-1 nonimmigrant classification because the record does not contain a Supplement B certifying that the Petitioner is a victim of qualifying criminal activity. Detective Division, Sheriff's Department, who signed the certification, identifies the victim as the Petitioner's year old daughter, and describes the victim's harm, not the Petitioner's, as a result of the sexual assault. The sheriff's incident report indicates that the Petitioner's daughter was the complainant and is the victim of the criminal activity. Under the regulation at 8 C.F.R. § 214.14(c)(2)(i), the certification must state that the Petitioner has been a victim of qualifying criminal activity. The petition was filed without a Supplement B naming the Petitioner as the victim of the criminal activity. For this additional reason, the U petition may not be approved.

III. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *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 I-C-D-E-*, ID# 17765 (AAO Aug. 24, 2016)