U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-L-M

DATE: DEC. 5, 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 Form I-918, Petition for U Nonimmigrant Status (U petition). The Director concluded that the U petition was not approvable because the record established the Petitioner's inadmissibility and the Petitioner's Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), requesting a waiver of the grounds of inadmissibility, had been denied.

The matter is now before us on appeal. On appeal, the Petitioner states that a brief and supporting evidence will be submitted and asks that the appeal be held in abeyance pending adjudication of the Petitioner's motion to reopen and reconsider denial of the waiver application filed with the Director.[1]

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

I. APPLICABLE LAW

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 U petition and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. A 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).

For individuals 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 waiver application in conjunction with the U petition in order to waive any ground of inadmissibility. The regulation at 8 C.F.R. § 212.17(b)(3) states, in pertinent part: "[t]here is no appeal of a decision to deny a waiver."

[1] To date no brief or additional evidence has been submitted.

Although the regulations do not provide for appellate review of the Director's discretionary denial of a waiver application, we may consider whether the Director's underlying determination of inadmissibility was correct.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a native and citizen of Jamaica, entered the United States without inspection, admission, or parole. The record of proceedings shows that on 2005, the Petitioner was convicted in the State of New York, of the following: grand larceny, a fourth degree felony, in violation of New York Penal Law § 155.30(1), for which she was sentenced to five years of probation; unauthorized practice of a profession, in violation of section 6512(1), for which she was given a conditional discharge; and identity theft, second degree, in violation of section 190.79(3), for which she was sentenced to five years of probation. On 2013, the Petitioner was convicted in United States District Court, of false statement in a passport application in violation of 18 U.S.C. § 1542, for which she was sentenced to one day incarceration in a federal prison, and of aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(1), for which she was sentenced to 24 months incarceration in a federal prison. On 2013, the Petitioner was placed in removal proceedings before an Immigration Judge, who on 2014, denied her application for asylum and withholding of removal and issued an order of removal.

On 2014, the Petitioner was the victim of a third degree criminal sexual act under New York Penal Law § 130.40(1). Based on her victimization, the Petitioner filed the instant U petition and a waiver application. The Director subsequently issued a request for evidence (RFE) with respect to the waiver application for documentation related to the Petitioner's criminal record and evidence to demonstrate that USCIS should exercise discretion to approve her waiver application. The Petitioner responded to the RFE and the Director then denied the waiver application, determining that the Petitioner did not merit a favorable exercise of discretion to waive the following applicable grounds of inadmissibility: conviction or commission of a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act; present without admission or parole under section 212(a)(6)(A)(i) of the Act; false claim to U.S. citizenship under section 212(a)(6)(C)(ii) of the Act; not in possession of valid documents under section 212(a)(7)(B)(i)(I) of the Act; and unlawful presence of more than one year under section 212(a)(9)(B)(i)(II) of the Act. The Director consequently denied the U petition because the waiver application had been denied.

III. ANALYSIS

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 her ground(s) of inadmissibility before she can be granted U-1 nonimmigrant status. On appeal, the Petitioner does not contest the findings of inadmissibility, and a review of the record confirms that the Petitioner is inadmissible.[2] As we have

[2] The Petitioner is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act as an alien with over one year of unlawful

no jurisdiction to consider the Director's decision on the waiver application, we must dismiss the appeal.[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). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of T-L-M,* ID# 92492 (AAO Dec. 5, 2016)

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presence because she is not seeking admission within 10 years of her "*departure or removal from the United States.*" (Emphasis added). The record does not show that the Petitioner ever departed or was removed from the United States. Therefore, we withdraw the Director's finding to the contrary. However, the Petitioner remains inadmissible under sections 212(a)(2)(A)(i)(I), 212(a)(6)(A)(i), 212(a)(6)(C)(ii), and 212(a)(7)(B)(i)(I) of the Act.

[3] On the same day that she filed her appeal, the Petitioner filed a motion to reopen and a motion to reconsider her denied waiver application. This motion remains pending; however, should the Director overturn her prior decision and approve the waiver application, we may reopen these proceedings to determine the Petitioner's eligibility for U-1 classification.