U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-M-

DATE: JULY 12, 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 Petitioner is inadmissible to the United States and does not merit a favorable exercise of her discretion to waive the grounds of inadmissibility.

The matter is now before us on appeal. On appeal, the Petitioner contends that, because an Immigration Judge waived his grounds of inadmissibility, the Director should also approve his waiver application.

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 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 which otherwise would preclude the benefit. To seek a waiver of inadmissibility, a petitioner submits a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application) along with a U petition. 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv). When adjudicating a waiver application, USCIS must determine whether it is in the public or national interest to exercise its discretion to waive any applicable inadmissibility ground(s) listed at section 212(a) of the Act, 8 US.C. § 1182. 8 C.F.R. § 212.17(b).

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 and, therefore, whether a waiver was required.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Haiti who was has had numerous interactions with law enforcement, was arrested on multiple occasions, and was convicted of several serious criminal offenses. A Form I-862, Notice to Appear, was issued to the Petitioner, placing him into removal proceedings based on the following convictions:

(1) Concealed Firearm/Carrying, in violation of Florida Statute 790.01(2), and Resisting Officer with Violence, in violation of FS 843.01, on , 1998, and sentenced to 100 days of incarceration followed by one year of probation;

(2) Cocaine Possession with Intent, in violation of FS 893.13(1)(A)1, on , 1999, and sentenced to 100 days of incarceration;

(3) Cocaine/Sell/Manufacture/Deliver/Possess/With Intent, in violation of FS 893.13(1)(A)1, and Firearm/Possession by Felon, in violation of FS 790.23, on 2002, and sentenced to five years of incarceration;

(4) Leaving Scene of Crash/Injury, in violation of FS 316.027(1)(A); Resisting Officer Without Violence, in violation of FS 843.02; Fleeing/Eluding/High Speed/Injury/Death, in violation of FS 316.1935(3)(B); Robbery/Carjacking, in violation of FS 812.133(2)(b); Burglary/Occupied Dwelling, in violation of FS 810.02(3)(A); Criminal Mischief/$1,000 or More, in violation of FS 806.13(1)(B)3; and Battery/Aggravated/Deadly Weapon, in violation of FS 784.045(1)(A)2, all on 2012, and sentenced to six months of community control and 54 months of probation.

The Petitioner filed a U petition, seeking U-1 status as a victim of an aggravated assault, along with a waiver application. The Director denied the waiver application, finding that the Petitioner was inadmissible under the following sections of the Act and he did not merit a favorable exercise of her discretion to waive these inadmissibility grounds:

212(a)(2)(A)(i)(I) – crimes involving moral turpitude
212(a)(2)(A)(i)(II) – controlled substance convictions
212(a)(2)(B) – multiple convictions with aggregate sentences of five years
212(a)(2)(C)(i) – suspected or convicted of being a controlled substance trafficker
212(a)(7)(B)(i)(I) – not in possession of a valid passport

Because the Petitioner's waiver application was denied, the Director consequently denied the U petition. In removal proceedings conducted before the Executive Office for Immigration Review of the U.S. Department of Justice, an Immigration Judge granted the Petitioner a separate waiver of inadmissibility under section 212(d)(3) of the Act and ordered the Petitioner removed from the United States.

III. ANALYSIS

On appeal, the Petitioner does not contest his inadmissibility. The Petitioner argues that the Director should reconsider her decision on the waiver application in light of the Immigration Judge's decision to grant a waiver of the same inadmissibility grounds. The Petitioner asserts that, pursuant to the decision in *L.D.G. v. Holder*, 744 F.3d 1022 (7th Cir. 2014), an Immigration Judge has jurisdiction to adjudicate waiver applications pursuant to section 212(d)(3) of the Act for petitioners seeking U nonimmigrant status.

In *L.D.G. v. Holder*, the U.S. Court of Appeals for the Seventh Circuit determined that an Immigration Judge has concurrent jurisdiction to waive statutory grounds of inadmissibility for U petitioners under section 212(d)(3) of the Act. *Id.* at 1031. We follow *L.D.G. v. Holder* only in matters arising within the Seventh Circuit; the Petitioner resides within the [redacted] *See Matter of Anselmo*, 20 I&N Dec. 25, 31 (BIA 1989)(providing that one circuit court's position on an issue is not binding throughout the United States). Accordingly, the Immigration Judge's waiver decision does not bind us to approve the waiver application that the Petitioner is required to file under section 212(d)(14) of the Act.

As the Director noted, the Petitioner is inadmissible to the United States on several grounds. The Petitioner does not contest his inadmissibility on appeal and we do not have jurisdiction to consider the Director's decision on the waiver application. 8 C.F.R. § 212.17(b)(3). In addition, the Director denied the waiver application on two additional grounds beyond those considered by the Immigration Judge. Specifically, the Director denied the waiver based on section 212(a)(2)(B) of the Act because the Petitioner had multiple convictions with aggregate sentences of five years or more, and section 212(a)(7)(B)(i)(I) of the Act because the Petitioner was not in possession of a valid passport. Accordingly, even if the Petitioner lived within the jurisdiction of the [redacted] the Immigration Judge's waiver decision would not be sufficient to establish the Petitioner's eligibility for U-1 status because the Immigration Judge did not waive the Petitioner's inadmissibility under sections 212(a)(2)(B) and 212(a)(7)(B)(i)(I) of the Act. The Petitioner is consequently ineligible for U-1 nonimmigrant classification. *See* 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 F-M-*, ID# 17375 (AAO July 12, 2016)