U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-R-J-

DATE: NOV. 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) 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 his Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), had been denied.

The matter is now before us on appeal. The Petitioner submits a brief and claims that the Director incorrectly concluded that he was inadmissible for marriage fraud. Alternatively, the Petitioner asserts that U.S. Citizenship and Immigration Services (USCIS) should grant him a waiver.

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

I. LAW

Section 212(d)(14) of the Act requires 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." Although the regulations do not provide for appellate review of the Director's discretionary denial of a waiver application, we may, however, consider whether the Director's underlying determination of inadmissibility was correct.

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

. . . .

(6) Illegal Entrants and Immigration Violators

. . . .

(C) Misrepresentation

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

. . . .

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 filed the instant U petition with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B). The Director issued a request for evidence regarding the Petitioner's inadmissibility due to marriage fraud, to which the Petitioner responded with additional evidence and the waiver application. The Director determined that the Petitioner was inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact in seeking to procure admission into the United States or other immigration benefit based on the Petitioner's fraudulent marriages to two U.S. citizens. After reviewing the evidence submitted in support of the waiver application, the Director determined that the Petitioner had not demonstrated that he warranted a favorable exercise of discretion. The Director consequently denied the Petitioner's U petition because the Petitioner is inadmissible and his waiver application was denied.

On appeal, the Petitioner contends that the Director erred in finding him inadmissible under section 212(a)(6)(C)(i) of the Act because he provided sufficient evidence that his marriages were *bona fide*. Alternatively, the Petitioner asserts that the Director should have favorably exercised discretion and approved the waiver application.

The Director found the Petitioner's marriages were not *bona fide* and that he entered into the marriages for the sole purpose of obtaining his green card based on evidence that the Petitioner made payments of $1000 to his second wife and $10,000 to his first wife. On appeal, the Petitioner asserts that he has not been provided an opportunity to rebut this evidence as required under 8 C.F.R. §§ 103.2(b)(16)(i)- (ii) and *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988), because the Director did not furnish him with copies of the derogatory evidence.[1]

The Department of Homeland Security (DHS) regulation to which the Petitioner refers provides that: "[i]f the decision will be adverse . . . and is based on derogatory information considered by the Service and of which the . . . petitioner is unaware, he/she *shall be advised of this fact* and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered (emphasis added)." We are not, through this regulation, required to furnish the Petitioner with copies of documents, as the Petitioner claims. The Director properly advised the Petitioner of the information upon which her adverse decision would be based, and she and provided the Petitioner with an opportunity to rebut it, despite the possibility that the Petitioner was already aware of this derogatory information due to the denials of the alien relative petitions filed by his prior spouses on his behalf. Accordingly, we find no error in the Director's decision in this regard. Moreover, neither we nor the Director are permitted to release copies of documentation in the Petitioner's file. The proper avenue to obtain such copies is through a Freedom of Information Act Request (FOIA).[2]

The record contains a sworn statement from the Petitioner's first wife in which she stated that she did not reside with him on a daily basis and resided with another man at another address. The record contains a sworn statement from the Petitioner's second wife stating that she had discovered that he had filled out paperwork for her without authorization regarding taxes and credit cards, that the Petitioner admitted to paying his first wife $10,000 to marry him, and that, as man and wife, the only things she and the Petitioner did together were to prepare and file the immigration papers and he paid a $1000 deposit for her car. She also stated that she felt the marriage was not legal and that she and the Petitioner had never consummated the marriage. Finally, she stated that, while she cared for the Petitioner, she knew that the purpose of the marriage was to help him out.

Furthermore, while the Petitioner claims to have resided with both of his wives during the marriages and has submitted leases, invoices, bills, bank account letters, driver's licenses and identification cards in support of this claim, his Form I-589, Application for Asylum and Withholding of Removal, indicates that he resided at a different house number on [redacted] than the one he claimed to have resided at with his first wife, resided in a different state from either spouse during the end of his first

[1] The Petitioner also cites to additional case law which is not precedential in the jurisdiction in which this case arises. Contrary to the Petitioner's assertions, none of the case law cited indicates that we are required to produce the actual evidence containing derogatory information in the context of U petition proceedings. *See Opoku-Agyeman v. Perez*, 886 F. Supp. 2d 1143, 1149 (W.D. Mo. 2012); *Ching v. Mayorkas*, 725 F.3d 1149 (9th Cir. 2013).

[2] The record reflects that the Petitioner filed a FOIA request on October 8, 2010.

marriage and beginning of his second marriage, and never resided at the [redacted] or [redacted] addresses he claimed to have shared with his second wife.

Accordingly, the Director did not err in finding the Petitioner inadmissible pursuant to section 212(a)(6)(C)(i) for attempting to obtain immigrant status through fraudulent marriages. The Petitioner is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) for attempting to obtain an immigration benefit through fraud and procuring entry into the United States by willful misrepresentation of a material fact.[3] The Petitioner is therefore ineligible for U nonimmigrant status without an approved waiver application.

The Director denied the Petitioner's waiver of inadmissibility and we have no jurisdiction to review the denial of a waiver submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3).

III. CONCLUSION

The Petitioner has not demonstrated his admissibility to the United States or that he has been granted a waiver of such. The Petitioner 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). We therefore affirm the Director's decision.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361; *see also 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 K-R-J-*, ID# 68455 (AAO Nov. 8, 2016)

[3] Furthermore, it appears that the Petitioner may also now be inadmissible under section 212(a)(7)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(B)(i)(I), as his passport expired on June 21, 2016.