U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-A-M-

DATE: SEPT. 26, 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 asserts that the Director incorrectly concluded that he was inadmissible for being convicted of a crime involving moral turpitude. However, the Petitioner concedes inadmissibility under other sections of the Act and asserts that U.S. Citizenship and Immigration Services (USCIS) should grant him a waiver.

Upon *de novo* review we will withdraw the Director's decision and remand for further proceedings consistent with this opinion and for the entry of a new decision.

I. 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." 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:

. . . .

(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,

. . . .

is inadmissible.

(ii) Exception

Clause (i)(I) shall not apply to an alien who committed only one crime if—

. . . .

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

. . . .

(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.

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Petitioner claims to have entered the United States without inspection, admission or parole on March 11, 2002. The Petitioner filed the instant U petition with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B), and a waiver application. The Director issued a request for evidence regarding the Petitioner's admissibility and conviction records, to which the Petitioner responded with additional evidence. The Petitioner's conviction records reflect that, in 2006, he pled no contest to battery against a person with whom he had a dating relationship, in violation of section 243(e)(1) of the California Penal Code (CPC). The Petitioner was sentenced to 24 days in jail, 36 months of probation, a domestic violence fee and counseling.

The Director determined that the Petitioner was inadmissible under the following provisions of the Act:

- Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I): Conviction of a crime involving moral turpitude (CIMT); and
- Section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i): Present without inspection, admission or parole.

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. The Petitioner now appeals the Director's determination that he is inadmissible for having been convicted of a CIMT, but does not contest his inadmissibility for being present in the United States without having been inspected, admitted or paroled.

III. ANALYSIS

The record reflects that, on [redacted] 2006, the Petitioner was convicted of battery against a person with whom he had a dating relationship, in violation of section 243(e)(1) of the California Penal Code (CPC). Whether the conduct proscribed by section 243(e)(1) involves moral turpitude need not be reached in this decision, as the conviction meets the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act. To qualify for the petty offense exception, the Petitioner must have committed only one crime involving moral turpitude, the maximum penalty possible for that crime must not exceed imprisonment for one year and, if he was convicted of such crime, he must not have

been sentenced to a term of imprisonment in excess of six months. The maximum possible term of imprisonment for a violation of CPC § 243(e)(1) does not exceed one year and the Petitioner was sentenced to less than six months in jail. Therefore, the Petitioner's conviction meets the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act, and the inadmissibility ground at section 212(a)(2)(A)(i)(I) of the Act does not apply to him. We therefore withdraw the Director's finding that the Petitioner is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for being convicted of a crime involving moral turpitude.

The Petitioner does not dispute that he is inadmissible under section 212(a)(6)(A)(i) of the Act or that he requires a waiver of inadmissibility.[1] Instead, the Petitioner asserts that the Director should have favorably exercised discretion and approved the waiver application.

Although we have no jurisdiction to review the denial of a waiver application submitted in connection with a U petition, because the Petitioner has shown that he is not inadmissible for conviction of a CIMT, only the section 212(a)(6)(A)(i) inadmissibility ground remains. Accordingly, the Director did not determine whether USCIS would have favorably exercised its discretion and approved the waiver if the Petitioner were not inadmissible under section 212(a)(2)(A)(i)(I) of the Act. We therefore remand the U petition to the Director for reconsideration of the waiver application.

ORDER: The decision of the Director, Vermont Service Center, is withdrawn. The matter is remanded to the Director, Vermont Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of A-A-M-*, ID# 11148 (AAO Sept. 26, 2016)

[1] On appeal, the Petitioner states that he is inadmissible due to reentry to the United States after one or more years of unlawful presence. *See* Section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). However, the record does not establish that the Petitioner has departed the United States since his initial entry in 2002 and section 212(a)(9)(B)(i)(II) of the Act requires that an individual have departed the United States after at least one year of unlawful presence in order to be found inadmissible. Accordingly, the Petitioner does not appear to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act.