U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-E-G-

DATE: FEB. 21, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner is the victim of multiple crimes and seeks U-1 nonimmigrant classification as a victim of qualifying criminal activity. The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity. 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 Director of the Vermont Service Center initially approved the U petition, but subsequently revoked approval on notice because the Petitioner was inadmissible to the United States due to criminal activity he did not disclose on his U petition. On appeal, we found the Petitioner to be inadmissible under section 212(a)(2)(C)(i) of the Act, 8 U.S.C. § 1182(a)(2)(C)(i), for illicit trafficking of a controlled substance, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining and attempting to obtain an immigration benefits by misrepresentation. We concluded that the U petition was approved in error and properly revoked pursuant to 8 C.F.R. § 214.14(h)(2)(i)(B) as the Petitioner did not seek and was not granted a waiver of these grounds of inadmissibility and was therefore ineligible for U-1 nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and 8 C.F.R. § 214.1(a)(3)(i). Our prior decision is incorporated here.

The matter is now before us on a motion to reopen and motion to reconsider. On motion, the Petitioner submits a brief, additional documentation, and copies of documentation in the record. The Petitioner asserts that we erred factually and legally in finding him to be inadmissible as an illicit trafficker. Upon review we will deny the motion to reopen and motion to reconsider.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of the law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The Petitioner's submission on motion contains new evidence and asserts, but does not establish, legal errors in our prior decision.

A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). USCIS will consider any credible evidence relevant to a U petition, but USCIS retains sole discretion to determine the credibility and weight to give that evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Motion to Reconsider

As discussed in our previous decision, under section 212(a)(2)(C) of the Act, an individual is inadmissible for illicit trafficking of a controlled substance if USCIS knows or has reason to believe he or she is, or has been, an illicit trafficker in any controlled substance, or is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking of a controlled substance. In the context of immigration law and inadmissibility for illicit trafficking, the Board of Immigration Appeals (the Board) has held that the "reason to believe" an individual is an illicit trafficker of a controlled substance must be based on reasonable, substantial, and probative evidence. *Matter of Rico*, 16 I&N Dec. 181, 185 (BIA 1977). The reason-to-believe standard does not require that an individual be prosecuted or convicted for his actions and is generally held to be similar to the standard of "probable cause." *See Cuevas v. Holder*, 737 F.3d 972, 975 (5th Cir. 2013) (holding "that an alien can be inadmissible under § 1182(a)(2)(C) [section 212(a)(2)(C) of the Act] even when not convicted of a crime"); *Lopez–Umanzor v. Gonzales*, 405 F.3d 1049, 1053 (9th Cir. 2005) ("Section 1182(a)(2)(C) does not require a conviction, but only a 'reason to believe' that the alien is or has been involved in drug trafficking."); *Garces v. U.S. Attorney General*, 611 F.3d 1337, 1345 (11th Cir. 2010) (same); *Ludecke v. U.S. Marshal*, 15 F.3d 496, 497 (5th Cir. 1994) (equating probable cause with a "reasonable ground" to believe the accused guilty).

On motion, the Petitioner reasserts that we do not have a reason-to-believe he was an illicit trafficker of a controlled substance because he was never arrested, charged, or prosecuted for any crime involving a controlled substance. However, as discussed in our previous decision, findings of inadmissibility for illicit trafficking of a controlled substance do not require there be an arrest, prosecution, or conviction, but that there be a reason-to-believe the individual is involved in illicit trafficking. *Cuevas v. Holder, 737 F.3d* at 975. The Petitioner asserts that we erred in finding the evidence in the record sufficient to meet the reason-to-believe standard and cites to federal and Supreme Court precedent cases regarding criminal grounds of probable cause in general and in informant-based cases. The cases cited to by the Petitioner, however, relate to probable cause in criminal cases and do not specifically relate to inadmissibility as an illicit trafficker.

On motion, the Petitioner claims that the police reports upon which we based our finding of inadmissibility are comparable to hearsay statements in police reports that the court in *Garces* found to not be reasonable, substantial, and probative evidence of the respondent's involvement in illicit trafficking. *Garces v. U.S. Attorney General, 611 F.3d* at 1349-1351. Whether a police report constitutes reasonable, substantial, and probative evidence in the context of an inadmissibility

finding under section 212(a)(2)(C) of the Act is a determination that is made on a case-by-case basis. In declining to find the respondent inadmissible under section 212(a)(2)(C) of the Act based on information in police reports, the court in *Garces* noted that there was very little information given in the police reports, the corroborating conviction had been vacated, and the police reports stated the police officer's conclusions rather than recording their observations of facts sufficient to show guilt. *Id.* at 1344, 1349. Here, the evidence in the Petitioner's case can be distinguished from the evidence present in *Garces*. The police reports in *Garces* show that the respondent was in a vehicle that drove an individual to a hotel who then sold a controlled substance for cash to an undercover police officer. The police report did not reflect that *Garces* was directly involved in the exchange of drugs for money, nor was he in possession of drugs when he was apprehended separately from the individual who had sold the controlled substance. The police reports indicated that it was the police officer's opinion that *Garces'* actions and conduct were consistent with an individual who was involved in the sale of the controlled substance. *Id.* In the Petitioner's case, multiple police reports indicate that the Petitioner sold cocaine to a confidential informant (CI) in uncontrolled and controlled buys on two occasions in 2004 and in early 2005; was witnessed by a CI selling cocaine to a third party in 2004; offered to sell cocaine to an undercover cop and a CI "in a couple of days" in 2004; and in mid- admitted to an undercover officer that he used to be in the business of selling drugs.[1]

The Petitioner criticizes the lack of outside corroboration of the information contained in the police reports such as separate statements or affidavits. In *Garces*, the court took issue with the police report as reasonable, substantial, and probative evidence because it only contained the opinions of the actions of the respondent, rather than testimony of police officers observing *Garces'* direct involvement with drug trafficking. In the instant case, the police reports indicate that on a number of occasions the CI or undercover officer took audio of his or her interaction with the Petitioner and that a review of the audio corresponded to the details provided by the CI or undercover officer with regard to their interactions with the Petitioner. Although the Petitioner characterizes the information in the police reports as conclusory statements, supplements to each police report indicate whether the testimony contained therein was relayed by a specific CI or police officer, and also attributes specific, observed actions made by the Petitioner in furtherance of drug trafficking. Thus we found that the record contained reasonable, substantial, and probative evidence that was sufficient to establish a reason-to-believe the Petitioner had been an illicit trafficker of a controlled substance.

Although the evidence establishing that the Petitioner was involved in illicit trafficking are police reports and we generally decline to give substantial weight to an arrest absent a conviction or other corroborating evidence, there are multiple police reports containing specific details with regard to concluded or planned drug transactions committed by the Petitioner, provided by multiple reliable sources, and supported by audio recordings reviewed in the police reports. *See Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995) (declining to give substantial weight to an arrest absent a conviction or other corroborating evidence, but not prohibiting consideration of arrest reports). We also note

[1] A controlled buy occurs when the purchase of drugs is performed by a confidential informant, but is supervised by a member of the police force or agency investigating the conduct, whereas an uncontrolled buy has no law enforcement support for the confidential informant.

that, other than his own testimony, the Petitioner presented no evidence to refute the claims in the police reports. Accordingly, the Petitioner has not established that our decision was incorrect based on the evidence at the time of the decision or that we incorrectly applied the law or policy.

B. Motion to Reopen

On motion, the Petitioner submits a personal statement, copies of police reports from the [redacted] Sheriff's Office, and a Freedom of Information Act (FOIA) request. The Petitioner contests the testimony of an undercover officer describing a lengthy conversation with him in which he admitted that he had previously been in the business of selling drugs. In support of his contention, the Petitioner submits a new statement in which he recalls the conversation differently. Specifically, he contends that he was joking with the undercover officer and points to the details within the report indicating that he stated he did not know anyone who was currently selling drugs, he had declined to get into the drug business with someone who had approached him the previous year, and relayed that he would never risk his family or his business to get into the drug business. While the Petitioner characterizes the undercover officer's statement that he had previously been involved in the drug business as a conclusion and implication, the report clearly relays that the Petitioner "said that he in that past has been in the business." Additionally, this is an instance in which a supplement to the report indicates that audio taken by the undercover officer was reviewed and found to be in accordance with the testimony given by the officer in the report.

The Petitioner reiterates his testimony that he has never been involved in drug trafficking and does not know why people would think that he does as he has a successful grocery store business that provides for him and his family. However, the police report regarding the undercover officer's above-described conversation with the Petitioner is not the sole source of evidence that establishes we have a reason-to-believe the Petitioner was involved in drug trafficking. As discussed above, multiple individuals gave testimony that they observed the Petitioner selling cocaine either to themselves or third parties, or making arrangements to sell cocaine at a later date.

Additionally, in his statement on motion, the Petitioner implies that the police reports may have confused him with his wife's family member, J-C-F-,[2] because he would drink and say he was the owner of the Petitioner's store. This explanation is insufficient to overcome the remaining evidence in the record. Accordingly, we affirm our decision finding the Petitioner to be inadmissible for illicit trafficking of a controlled substance and for obtaining and attempting to obtain an immigration benefit by misrepresentation. We also affirm our finding that the U petition was approved in error and properly revoked pursuant to 8 C.F.R. § 214.14(h)(2)(i)(B) as the Petitioner did not seek and was not granted a waiver of these grounds of inadmissibility and was therefore ineligible for U-1 nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and 8 C.F.R. § 214.1(a)(3)(i).

Finally, the Petitioner indicates that he had made a FOIA request for a copy of the record and requests that we defer our adjudication of the motion until he receives the response. However, the

[2] Initials used to protect individual's identity.

FOIA is a separate procedure from the present motion and there is no statutory or regulatory provision that requires us to hold a motion in abeyance while a FOIA request is pending.

III. CONCLUSION

As the Petitioner has not established that we incorrectly applied the law or policy, or that our decision was incorrect based on the evidence before us, his motion to reconsider does not meet the requirements for motions under 8 C.F.R. § 103.5. Nor does the Petitioner establish that he is eligible for U-1 nonimmigrant status although he submitted new evidence on motion.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-E-G-*, ID# 00861946 (AAO Feb. 21, 2018)