U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4792378

Date: JAN. 29, 2020

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity under sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p).

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish that Petitioner warranted a favorable exercise of discretion.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions and the 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 &N Dec. 369, 375 AAO 2010). Upon *de novo* review, we will dismiss the appeal.

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 they are admissible to the United States or that any grounds of inadmissibility have been waived. *See* 8 C.F.R. § 214.1(a)(3)(i) (an individual applying for admission to or requesting an extension of stay in the United States must establish they are admissible to the United States).

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.

II. ANALYSIS

The Director concluded that the Petitioner is inadmissible to the United States under five sections of the Act:

- Section 212(a)(6)(A)(i), as an alien present without admission or parole
- Section 212(a)(9)(A)(ii), as an alien previously removed, not as an arriving alien
- Section 212(a)(9)(B)(i)(II), as a non-LPR unlawfully present in the United States one year or more
- Section 212(a)(9)(C)(i)(I), as an alien unlawfully present for one year in the aggregate and then entered or attempted to enter the United States without admission
- Section 212(a)(9)(C)(i)(II), as an alien previously ordered removed and then entered or attempted to enter the United States without admission

As summarized in the Director's decision, the Petitioner first entered the United States without inspection or admission in 1998, and was ordered removed in absentia by an Immigration Judge in [redacted] 2010. The Petitioner departed from the United States around June 2010, effectively executing the Immigration Judge's removal order. Approximately a week later, also in June 2010, the Petitioner again entered the United States without admission or inspection. The Immigration Judge's removal order was reinstated against him, and the Petitioner was removed from the United States in [redacted] 2016. The Petitioner entered the United States without inspection or admission for the third time in October 2016. The Petitioner does not dispute his inadmissibility under the immigration-related grounds identified by the Director. Instead, the Petitioner contends on appeal that he warrants a favorable exercise of discretion. Specifically, the Petitioner claims that the Director did not properly weigh his criminal and immigration violations, or properly consider his favorable and unfavorable factors.

The Petitioner has not established that he is admissible to the United States, as he does not dispute his immigration-related inadmissibility under the above-referenced sections of the Act, or demonstrate that the grounds of inadmissibility have been waived. 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 U waiver application, in conjunction with a U petition, in order to waive any ground of inadmissibility. The Director has determined that the Petitioner does not merit a discretionary waiver. We have no jurisdiction to review the discretionary denial of a U waiver application submitted in connection with a U petition, and only consider whether the Director's underlying admissibility determination was correct. *See* 8 C.F.R. § 212.17(b)(3) (stating that the denial of a waiver of a ground of inadmissibility cannot be appealed). 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).

ORDER: The appeal is dismissed.