U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: MOREL-UCETA, ANGEL RAFAEL **A 034-538-185**

Date of this notice: 12/14/2018

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Morris, Daniel
Liebowitz, Ellen C
Mullane, Hugh G.

Userteam: Docket

File: A034-538-185 – Miami, FL

Date: DEC 14 2018

In re: Angel Rafael MOREL-UCETA a.k.a. Angel Kos

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mark Andrew Prada, Esquire

ON BEHALF OF DHS: Christian M. Pressman
Assistant Chief Counsel

APPLICATION: Adjustment of status; waiver of inadmissibility under section 212(c)

The respondent, a native and citizen of the Dominican Republic and lawful permanent resident of the United States, appeals the Immigration Judge's July 18, 2018, decision denying his applications for adjustment of status under section 245(a) of the Immigration and Nationality Act, 8 U.S.C. § 1255(a), and for a waiver of inadmissibility under former section 212(c) of the Act, 8 U.S.C. § 1182(c) (1994). The Department of Homeland Security opposes the appeal. The appeal will be sustained, in part, and the record remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge pretermitted the respondent's application for adjustment of status under section 245(a) of the Act because he determined that the respondent is inadmissible to the United States because of his 1989 conviction for possession of cocaine (IJ at 4-5; Exh. 10). *See* section 245(a)(2) of the Act (requiring that an applicant for adjustment of status be admissible to the United States). The respondent does not contest that his 1989 conviction for possession of cocaine is a controlled substance offense that would render an alien inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II). He argues, however, that he is not inadmissible because he was previously granted a waiver under former section 212(c) of the Act based on this conviction (Exhs. 9, 11; Respondent's Br. at 10-21). In the alternative, he argues that if his prior grant of 212(c) relief did not waive his current inadmissibility under section 212(a)(2)(A)(i)(II) of the Act, he should be permitted to apply for a waiver under section 212(c) of the Act in conjunction with his application for adjustment of status (Respondent's Br. at 21-22).

The respondent was previously placed in deportation proceedings in 1991 and charged with deportability under former section 241(a)(11) of the Act, 8 U.S.C. § 1231(a)(11) (1988), for having been convicted of a controlled substance offense based on his 1989 conviction for possession of cocaine. On January 25, 1993, the prior Immigration Judge granted the

respondent's application for a waiver of this ground of removal under former section 212(c) of the Act (Exhs. 9, 11).

The respondent's prior grant of relief under former section 212(c) of the Act waives his inadmissibility to the United States based on his 1989 conviction for possession of cocaine. A grant of relief under former section 212(c) of the Act remains valid indefinitely as to the specific grounds stated at the time of the grant of relief. 8 C.F.R. § 1212.3(d); *see Matter of Balderas*, 20 I&N Dec. 389, 393 (BIA 1991). Once a waiver is granted as to a ground of deportability, it is likewise granted as to the corresponding ground of inadmissibility. *Matter of Balderas*, 20 I&N Dec. at 392. Because the respondent's grant of relief under former section 212(c) of the Act waived his deportability for a controlled substance offense based on his 1989 conviction for possession of cocaine, this same conviction cannot now render him inadmissible to the United States based on a conviction for a controlled substance offense. *See id.*

The fact that the respondent does not contest removability, but rather argues that he is eligible for adjustment of status does not affect our analysis (Respondent's Br. at 2 n.2). It is well-established that an alien can seek a waiver under former section 212(c) of the Act in conjunction with an application for adjustment of status to waive a ground of inadmissibility that would otherwise render him or her ineligible for relief. *See Matter of Gabryelsky*, 20 I&N Dec. 750, 752-53 (BIA 1993); *see also Matter of Azurin*, 23 I&N Dec. 695, 697 (BIA 2005); *Matter of Rodarte-Espinoza*, 21 I&N Dec. 150, 151-52 (BIA 1995). This is true even when the alien is removable from the United States under another ground of removal which would be unaffected by the grant of a waiver under former section 212(c) of the Act. *See Matter of Gabryelsky*, 20 I&N Dec. at 752-53. Thus, it logically follows that if an alien can apply for relief under former section 212(c) of the Act to waive his or her inadmissibility for the purposes of adjustment of status, the alien can likewise rely on a prior grant of relief under former section 212(c) of the Act to waive a specific ground of inadmissibility in the context of an application for adjustment of status. *See* 8 C.F.R. § 1212.3(d) (noting that a grant of relief under former section 212(c) of the Act remains valid indefinitely).

The Immigration Judge relies on the Board's decision in *Matter of Fernandez Taveras*, 25 I&N Dec. 834 (BIA 2012), to conclude that the respondent's inadmissibility based on his 1989 conviction is not waived for the purposes of relief from removal (IJ at 5). In that case, we held that a lawful permanent resident who was granted cancellation of removal in earlier removal proceedings that were based on a drug conviction had the burden to prove that he was not inadmissible on the basis of that conviction when applying for adjustment of status in subsequent removal proceeding. *Id.* at 836-37. Unlike relief under former section 212(c) of the Act, cancellation of removal applies only to the specific removal proceedings at issue and does not to waive an alien's ground of removal for future removal proceedings. *Compare* section 240A of the Act, 8 U.S.C. § 1229b; 8 C.F.R. §§ 1240.20, 1240.21, *with* 8 C.F.R. § 1212.3(d). Thus, this case does not apply to the matter at issue on appeal.

The respondent's case is also distinguishable from the circuit court decisions cited by the Immigration Judge involving naturalization (IJ at 5). *See Alocozy v. USCIS*, 704 F.3d 795 (9th Cir. 2012); *Chan v. Gantner*, 464 F.3d 289 (2d Cir. 2006). In those cases, the circuit court concluded that an alien's conviction for an aggravated felony—for which he previously obtained

a waiver under former section 212(c) of the Act—could be used to find the respondent did not satisfy the good moral character requirement for naturalization. *See Alocozy v. USCIS*, 704 F.3d at 797-98; *Chan v. Gantner*, 464 F.3d at 295. The respondent's case, however, does not involve a question of whether his drug conviction could sustain a different ground of inadmissibility or render him ineligible for adjustment of status on some other basis. *See Matter of Balderas*, 20 I&N Dec. at 391 (noting that the crime underlying a ground of removal waived under former section 212(c) of the Act does not disappear and can continue to have immigration consequences). Rather, the issue is whether the drug conviction can be used to find the respondent inadmissible under a ground of removal for which he was previously granted a waiver under former section 212(c) of the Act. We conclude that it cannot be.

Based on the foregoing, we conclude that the respondent's prior grant of a waiver under former section 212(c) of the Act waives his inadmissibility for a controlled substance offense based solely on his 1989 conviction. Thus, we will not address the respondent's argument that he should be permitted to apply for a second waiver of inadmissibility based on his 1989 conviction. Because the Immigration Judge did not articulate any other basis for pretermitting the respondent's application for adjustment of status, we will remand the record to the Immigration Judge to further consider the respondent's eligibility for the requested relief. Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained, in part.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this order and for the entry of a new decision.

FOR THE BOARD