U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9438173

Date: JULY 22, 2020

Motion on Administrative Appeals Office Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification as a victim of human trafficking under Immigration and Nationality Act (the Act) sections 101(a)(15)(T) and 214(o), 8 U.S.C. §§ 1101(a)(15)(T) and 1184(o). The Director of the Vermont Service Center denied the Form I-914, Application for T Nonimmigrant Status (T application), because the record established the Applicant's inadmissibility and his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (T waiver application), requesting a waiver of the grounds of inadmissibility, had been denied. We dismissed the Applicant's subsequent appeal and the matter is now before us on a combined motion to reopen and motion to reconsider. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Upon review, we will dismiss the motion to reopen and motion to reconsider.

I. LAW

A motion to reopen must state new facts and be supported by documentary 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 law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

Section 212(d)(13) of the Act requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a T application, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The Applicant bears the burden of establishing that he or she is admissible to the United States or that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). Applicants who are inadmissible to the United States must file a T waiver application in conjunction with a T application in order to waive any ground of inadmissibility. 8 C.F.R. §§ 212.16, 214.11(d)(2)(iii). There is no appeal of a decision to deny a waiver. 8 C.F.R. § 212.16(c). Although the regulations do not provide for appellate review of the Director's discretionary denial of a waiver application filed in T proceedings, we may still consider whether the Director was correct in finding the Applicant inadmissible to the United States and, therefore, requiring an approved waiver application.

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). An applicant may submit any credible evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the evidentiary value to give that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

As discussed in our decision on appeal, the Applicant last entered the United States without admission, inspection, or parole in February 2015 when he was 16 years old. He filed his T application in May 2016 based on a claim that a drug cartel subjected him to labor trafficking. The Director denied the T application because the record demonstrated that the Applicant was inadmissible to the United States under sections 212(a)(2)(C) (reason to believe the applicant has been a controlled substance trafficker), 212(a)(6)(A)(i) (present without admission or inspection), 212(a)(6)(E) (alien smuggling), and 212(a)(7)(B)(i)(I), (II) (nonimmigrant without a valid passport or valid visa) of the Act, and his application to waive the grounds of inadmissibility had been denied.

We noted in our decision on appeal that the Applicant had not contested his inadmissibility on the grounds identified by the Director, and that our review of the record found no error in the Director's determination of inadmissibility. Additionally, we noted that the Applicant may be inadmissible under section 212(a)(1)(A)(iv) of the Act for drug abuse or addiction. We explained that the Applicant had admitted in his personal statements that he used drugs, including cocaine and marijuana, from age nine until age 16. Although the Applicant submitted a Form I-693, Report of Medical Examination and Vaccination Record (medical examination), it did not indicate that a civil surgeon had been informed of the Applicant's past drug use and considered whether he was in remission. Further, we noted that the record did not establish the examining physician's qualification as a designated civil surgeon or panel physician authorized to make a finding as to whether a Class A or B Substance (Drug) Abuse/Addiction exists. Accordingly, we concluded that the record did not overcome the evidence of the Applicant's inadmissibility under section 212(a)(1)(A)(iv) of the Act for substance abuse or addiction.

On motion, the Applicant still does not contest his inadmissibility under sections 212(a)(2)(C), 212(a)(6)(A)(i), 212(a)(6)(E), and 212(a)(7)(B)(i)(I), (II) of the Act, but asserts that we erred in not considering his argument that the Director had relied on an erroneous legal standard when considering his T waiver application. He argues that the Director improperly applied the factors in *Matter of Hranka*, 16 I&N Dec. 491 (BIA 1987), and that we should have considered his arguments regarding that error. However, *Matter of Hranka* discusses factors relating to whether an applicant merits a waiver, including the risk an applicant poses to society, the seriousness of immigration or criminal law violations, and the reasons for an applicant's desire to enter the United States. 16 I&N Dec. at 493. These factors are relevant to the Applicant's request for a waiver of inadmissibility as a matter of discretion, of which there is no appeal. 8 C.F.R. § 212.16(c). As discussed, we have authority to consider whether the Director was correct in finding the Applicant inadmissible to the United States and, therefore, requiring an approved waiver application, but not to review whether the Director improperly denied the waiver. The Applicant has not contested his inadmissibility under the grounds the Director identified, and the record does not indicate error in the Director's inadmissibility determination.

The Applicant further states on motion that we erred in determining that he was inadmissible under section 212(a)(1)(A)(iv) of the Act for drug abuse or addiction. He argues that the fact that the physician did not indicate that he was in remission, but instead indicated that there was "No Class A or B Substance (Drug) Abuse/Addiction," does not establish that the physician was unaware of his past drug use. He submits a personal statement indicating he does not recall whether the physician asked him whether he had used drugs in the past, but that if the physician had asked such questions, he would have answered honestly. He also states that he knew one purpose of the medical examination was to ensure he was no longer using drugs, and he took a drug test at the appointment. Furthermore, he provides evidence to show that the physician who completed his medical examination was an approved civil surgeon. However, regardless of whether the Applicant is inadmissible under section 212(a)(1)(A)(iv) of the Act, he remains inadmissible under sections 212(a)(2)(C), 212(a)(6)(A)(i), 212(a)(6)(E), and 212(a)(7)(B)(i)(I), (II) of the Act, he does not dispute his inadmissibility on those grounds, and his T waiver application remains denied.

III. CONCLUSION

On motion, the Applicant does not state new facts that establish his eligibility, nor does he establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record at the time of the decision. The Applicant remains inadmissible and his T waiver application remains denied, and we lack authority to review that denial.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.