U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5437706

Date: OCT. 1, 2020

Appeal of Nebraska 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 Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish his admissibility, as required. The Director concurrently denied the Petitioner's Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), finding that a favorable exercise of discretion was not warranted. On appeal, the Petitioner asserts that the Director's decision was in error. Petitioners must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

When adjudicating a U petition, U.S. Citizenship and Immigration Services (USCIS) determines whether a petitioner is inadmissible, and has the authority to waive certain grounds of inadmissibility as a matter of discretion. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14). U petitioners bear the burden of establishing that they are admissible to the United States or that any applicable ground of inadmissibility has been waived. 8 C.F.R. § 214.1(a)(3)(i). To meet this burden, an inadmissible U petitioner must file a waiver application in conjunction with the U petition, requesting waiver of any grounds of inadmissibility. 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv). The denial of a waiver application is not appealable. 8 C.F.R. § 212.17(b)(3). Although we do not have jurisdiction to review the Director's discretionary denial, we may consider whether the Director's underlying determination of inadmissibility was correct.

II. ANALYSIS

The Petitioner filed his U petition in November 2014. The Director denied the petition because the Petitioner was inadmissible to the United States and the Director had denied the Petitioner's waiver application in a separate decision. In the denial of the waiver application, the Director concluded that

the Petitioner was inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole), 212(a)(9)(B)(i)(II) (unlawfully present in the United States for one year or more), and 212(a)(9)(C)(i)(I) (unlawfully present for more than one year and entered or attempted to enter without being admitted) of the Act and that he had not established that he merited a favorable exercise of discretion.

On appeal, the Petitioner focuses mainly on his assertion that the Director erred in denying his waiver application on discretionary grounds. He argues that the Director failed to consider favorable factors in his case, placed too much weight on his encounters with law enforcement, and erred in finding that he had not established that a grant of the waiver would be in the national or public interest. However, the denial of a waiver application is not appealable. 8 C.F.R. § 212.17(b)(3). 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 on discretionary grounds.

The Petitioner also briefly argues that he is not inadmissible. With regard to sections 212(a)(6)(A)(i) and 212(a)(9)(C)(i)(I) of the Act, he asserts that he was subject to a "waive-through admission [which] constituted a lawful entry into the United States after inspection and authorization by an immigration officer." Accordingly, he argues that he "cannot be said to be present without admission or parole or have entered or to have attempted to reenter the United States without being admitted . . . ." Regardless of whether the Petitioner is inadmissible under sections 212(a)(6)(A)(i) and 212(a)(9)(C)(i)(I) of the Act, however, he is inadmissible under section 212(a)(9)(B)(i)(II).

An alien who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i) of the Act. The record in this case establishes that the Petitioner first entered the United States as a young child in 1988 without inspection, admission, or parole. He departed and reentered the country at least twice as a child, between 1990 and 1993. In 2008, when he was 19 or 20 years old, and again in April 2009, he departed the United States for a few hours at a time and reentered. The Petitioner accrued more than one year of unlawful presence between [redacted] 2006, when he reached the age of 18 years,[1] and his departure from the United States in 2008. He subsequently departed and reentered again in April 2009, and has remained in the United States since then. Accordingly, he is inadmissible under section 212(a)(9)(B)(i) of the Act for being unlawfully present for one year or more and seeking admission within 10 years of the date of his departure.

On appeal, the Petitioner asserts that 10 years have elapsed since his last departure from the United States in 2009, and that his need for a waiver of inadmissibility under section 212(a)(9)(B)(i)(II) has therefore expired. The Petitioner does not cite any legal authority in support of his assertion. The terms and intent of section 212(a)(9) of the Act require that an individual be subject to the inadmissibility bar until they have remained outside the United States for the required period. Allowing an alien to serve any portion of their period of inadmissibility inside of the United States would reward recidivism and be contrary to the purpose of the enactment of section 212(a)(9) of the Act. *Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006) ("It is recidivism, and not mere

[1] Section 212(a)(9)(B)(iii)(I) of the Act provides that an individual does not accrue unlawful presence while under 18 years of age.

unlawful presence, that section 212(a)(9) is designed to prevent."). Here, the Applicant has not remained outside of the United States for the requisite 10-year period. Accordingly, he remains inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Since the Petitioner's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether he is also inadmissible under sections 212(a)(6)(A)(i) and 212(a)(9)(C)(i)(I) of the Act. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner is inadmissible and his waiver application has been denied. Accordingly, he has not established eligibility for U nonimmigrant status.

ORDER: The appeal is dismissed.