U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6340548

Date: JUNE 3, 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 Petitioner's 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. The Director's decision to deny the U petition is before us on appeal. 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).

A petitioner must establish that he or she meets 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).

II. ANALYSIS

The Petitioner, a native and citizen of Mexico, filed the instant U petition in August 2014. In September 2018, the Director denied the petition, determining that the Petitioner had not established that he was admissible to the United States. The Director explained that she was unable to conclude that a favorable exercise of discretion was warranted and the waiver application was denied.

Consequently, the Director determined the Petitioner was ineligible for U nonimmigrant status as he remained inadmissible to the United States under sections 212(a)(2)(A)(i)(I) (conviction or commission of a crime involving moral turpitude), 212(a)(2)(A)(i)(II) (controlled substance violation, conspiracy, or attempt), 212(a)(2)(C)(i) (controlled substance trafficker), and section 212(a)(6)(A)(i) (alien present without admission or parole) of the Act.

On appeal, regarding his inadmissibility under sections (212)(a)(2)(A)(i)(II) and 212(a)(2)(C)(i) of the Act, the Petitioner asserts that the Director erred in stating that the relevant criminal offense was "Marijuana-Smuggling," as the actual judgment and sentence was for "Possession of Marijuana With Intent." In support of his claim, the Petitioner submits a *Plea and Acknowledgment of Rights* from the Circuit Court for [redacted] Florida, showing that he entered a plea of no contest to Possession of Marijuana with Intent to Sell in [redacted] 2006 and that this offense carries a maximum penalty of five years. The Petitioner also submits a *Clerk's Court Worksheet- Final Disposition Information* from [redacted] 2006, indicating that he was sentenced to 11 months and 29 days of jail, followed by 36 months of probation. Although the Applicant is correct regarding the offense of which he was convicted, the record reflects that the Director stated that the Applicant was arrested and charged with Marijuana-Smuggling in [redacted] 2005, not that he was convicted of this offense, and the record supports this determination.[1] Regardless, as the Petitioner was convicted of Possession of Marijuana with Intent to Sell, the Director correctly determined that he was inadmissible due to his conviction for a controlled substance offense, and had reason to believe that he was a trafficker in a controlled substance. As such, we find no error in the Director's determination that the Petitioner was inadmissible under sections (212)(a)(2)(A)(i)(II) and 212(a)(2)(C)(i) of the Act.

With respect to his inadmissibility under section 212(a)(6)(A)(i) of the Act, the Petitioner states that it is "possible" that his February 2000 entry into the United States is "consistent with that of a person who is a victim of human trafficking" and that he is "currently seeking legal assistance to better understand this consideration." The Petitioner submits a copy of Florida's anti-trafficking statute in support of his claim, and additionally provides a copy of his Form 1040, U.S. Individual Income Tax Return, from 2017. Although we acknowledge this claim, the Petitioner has provided insufficient evidence to support it, and has not met his burden to demonstrate that he is not inadmissible under section 212(a)(6)(A)(i) of the Act, or that he was admitted or paroled into the United States. *See Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (describing a petitioner's burden of proof under the preponderance of the evidence standard).

The record establishes that the Petitioner is inadmissible to the United States, at a minimum, on the grounds stated above. Notably, the Petitioner does not contest his inadmissibility on the grounds indicated by the Director or argue that the Director otherwise erred in finding him inadmissible to the United States. However, our review on appeal is limited to whether the Petitioner is in fact inadmissible to the United States, as determined by the Director, and consequently ineligible for U nonimmigrant status. We do not have the authority to review the Director's discretionary determination or to adjudicate a waiver application. 8 C.F.R. § 212.17(b)(3). As the record establishes

[1] The record further contains the Applicant's fingerprint report from the Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division, which states that the Applicant was charged in [redacted] 2005 by the Drug Enforcement Agency (DEA) of [redacted] Florida with "Charge 1-3561 – Marijuana – Smuggl[.]"

that the Petitioner is inadmissible to the United States, he has not demonstrated that he is eligible for U-1 nonimmigrant status.

ORDER: The appeal is dismissed.