U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12890079

Date: AUG. 26, 2022

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of U Nonimmigrant

The Applicant seeks to become a lawful permanent resident (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on his "U" nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant submits a brief. We review the questions in this matter *de novo*. *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

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant "admitted into the United States . . . under section 101(a)(15)(U) [of the Act]" to that of an LPR if the applicant meets the eligibility criteria and otherwise establishes continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act.

Implementing regulations require a U adjustment applicant to establish that, *inter alia*, he or she was "lawfully admitted to the United States" as a U nonimmigrant and that his or her "presence in the United States is justified on humanitarian grounds, to ensure family unity, or is in the public interest." 8 C.F.R. § 245.24(b)(2)(i), (b)(6).

Lawful admission, as utilized at 8 C.F.R. § 245.24(b)(2)(i), contemplates both procedural regularity and compliance with substantive legal requirements. *See Matter of Longstaff*, 716 F.2d 1439, 1441-42 (5th Cir. 1983) (holding that the term "lawfully admitted" at section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20), "denotes compliance with substantive legal requirements, not mere procedural regularity . . . ."). An admission is not in compliance with substantive legal requirements if, at the time of admission, the individual was not entitled to it. *See Matter of Koloamatangi*, 23 I&N Dec. 548, 550 (BIA 2003) (holding, likewise in the context of section 101(a)(20) of the Act, that an individual was not "'lawfully' admitted for permanent residence status if, at the time such status was accorded, he or she was not entitled to it" and that the individual is therefore "deemed, ab initio, never to have obtained lawful permanent resident status once [the] original ineligibility . . . is determined in proceedings"); *Injeti v. USCIS*, 737 F.3d 311, 346 (4th Cir. 2013) (adopting the reasoning of

Koloamatangi in holding that, "to establish . . . lawful admi[ssion, the appellant] must do more than simply show that she was granted LPR status; she must further demonstrate that the grant of that status was 'in substantive compliance with the immigration laws.'").

To establish eligibility for U nonimmigrant status, a petitioner must establish that he or she is admissible to the United States or that any applicable ground of inadmissibility has been waived. 8 C.F.R. § 214.1(a)(3)(i) ("Every nonimmigrant alien who applies for admission to . . . the United States, must establish that . . . she is admissible to the United States, or that any ground of inadmissibility has been waived . . . ."). To meet this burden, a 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 waiver application must be accompanied by a "statement signed by [the Petitioner] under penalty of perjury that specifies the applicable ground of inadmissibility, the factual basis for [the] inadmissibility, and [the Petitioner's] reasons for claiming that [she] should be granted advanced permission to enter the United States." Form I-192, Instructions for Application for Advance Permission to Enter as a Nonimmigrant (Dec. 2019 ed.), at 6; *see also* 8 C.F.R. §§ 103.2(a)(1) ("Every form, benefit request, or document must be submitted . . . and executed in accordance with the form instructions . . . . The form's instructions are hereby incorporated into the regulations requiring its submission.") and 214.14(d)(1) (stating that each applicant for U nonimmigrant status must submit a U petition "in accordance with . . . the instructions to" the petition). USCIS 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).

An applicant must establish that he or she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b); *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010).

II. ANALYSIS

The Applicant, a native and citizen of India, last entered the United States as a visitor in 2007. USCIS granted the Applicant U nonimmigrant status as the victim of qualifying criminal activity in October 2015. The Applicant timely filed the instant U adjustment application in December 2018. The Director denied the application, concluding that the Applicant was ineligible to adjust status because he had not been lawfully admitted to the United States as a U nonimmigrant. The Director explained that in October 2010, the Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, concurrently with a Form I-130, Petition for Alien Relative. The Form I-130 was approved. After the Applicant's interview, USCIS investigators conducted a site visit and found out that the Applicant and his U.S. citizen spouse never resided at the address of record. In addition, USCIS investigators found out that the Applicant and his spouse submitted a fraudulent lease agreement and fraudulent utility statements. The Applicant was issued a Notice of Intent to Revoke but never responded, and the Form I-130 was revoked. Due to the revocation of the Form I-130, the Form I-485 was denied.

The Director further explained that when the Applicant filed the Form I-918, Petition for U Nonimmigrant Status (U petition), and the U adjustment application, he did not disclose that he submitted fraudulent documentation to USCIS during the processing of the previously filed Form

I-130 and Form I-485.[1] The Director stated that the Applicant explained, in response to the request for evidence, that after he was married, an attorney filed the Form I-130 and Form I-485 on his behalf without asking for any additional documentation and that for his interview, the attorney gave him the lease agreement and various documentation. The Applicant stated that he did not prepare the fraudulent documents. Although he did not prepare the fraudulent documents, the Applicant submitted them and thus continued to provide false information during the interview. Therefore, the Director concluded that, at the time his U petition was approved in October 2015, he was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit. The Applicant did not file a Form I-192, Application for Advance Permission to Enter the United States, to request a waiver of any ground of inadmissibility.

On appeal, the Applicant contends he is not inadmissible because he did not willfully misrepresent a material fact. The Applicant claims that any misrepresentation was not willful because the acts "were not done so deliberately or voluntarily." The Applicant further contends that he was "merely following the advice of people who told him that they could get him status in the United States."

Because USCIS applications are signed "under penalty of perjury," an applicant, by signing and submitting the application or materials submitted with the application, is attesting that their claims are truthful. 8 *USCIS Policy Manual* J.3(D)(1), https://www.usicis.gov/policymanual. The Applicant's signature on these applications "establishes a strong presumption" that he knew and assented to the contents. *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). Such a presumption can be rebutted through evidence that an applicant was misled and deceived by their representative when preparing the application. *Id.* The Applicant has not submitted evidence to support his claim that he was misled by the individual who prepared the applications, and the record indicates that he knowingly submitted fraudulent documents that his attorney provided in an effort to obtain lawful permanent residence based on marriage to his former spouse. Accordingly, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking adjustment of status in 2010 through fraud or misrepresentation. This ground of inadmissibility was not waived by the Director at the time his U petition was granted in 2015, and he was therefore not "lawfully admitted" to the United States in U nonimmigrant status.

III. CONCLUSION

The Applicant has not overcome the Director's determination that he was not "lawfully admitted" to the United States in U nonimmigrant status and was consequently ineligible to adjust his status under section 245(m) of the Act and 8 C.F.R. § 245.24(b)(2)(i).

ORDER: The appeal is dismissed.

[1] On both his U adjustment application and U petition, the Applicant answered "No" to the following questions: have you ever, by fraud or willful misrepresentation of a material fact, sought to procure, or procured, a visa or other documentation, for entry into the United States or any immigration benefit and have you ever lied about, concealed, or misrepresented any information on an application or petition to obtain a visa, other documentation required for entry into the United States, admission to the United States, or any other kind of immigration benefit?