U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18107814

Date: FEB. 2, 2022

Motion on Administrative Appeals Office Decision

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

The Applicant seeks to become a lawful permanent resident based on her derivative "U" nonimmigrant status under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), and we dismissed the Applicant's subsequent appeal. The matter is now before us on a motion to reconsider, where the Applicant argues that we erred in the decision dismissing her appeal. Upon review, we will dismiss the motion.

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 they meet the eligibility criteria and otherwise establish that their 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*, they were "lawfully admitted to the United States" as a U nonimmigrant and that their "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"); *see also Mejia-Orellana v. Gonzales*, 502 F.3d 13, 16 (1st Cir. 2007) (according deference to the reasoning of *Koloamatangi*).

To establish eligibility for U nonimmigrant status, a petitioner must establish 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) ("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 Form I-192, Application for Advance Permission to Enter as Nonimmigrant (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).

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

Here, the Applicant has not established that our prior decision was based on an error of law or policy, or was otherwise incorrect based on the record at the time of the decision.

II. ANALYSIS

In our previous decision dismissing the Applicant's appeal, incorporated here by reference, we concluded that the Applicant was not lawfully admitted as a U nonimmigrant as she was granted a waiver of inadmissibility under sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(I) of the Act only. We determined that the Applicant was additionally inadmissible under section 212(a)(6)(C)(i) of the Act (fraud or willful misrepresentation of a material fact in order to procure an immigration benefit) at the time of the adjudication of her Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient (derivative U petition), or her waiver application, and that she has not received a waiver for this separate ground of inadmissibility. With her U adjustment application, the Applicant admitted to paying for a false visa to enter the United States using the name '[redacted]' and had not previously disclosed this fact with either her derivative U petition or associated waiver application.

On motion to reconsider, the Applicant contends, through counsel, that she did not sign the derivative U petition, "under penalty of perjury that the information provided was true and correct." Rather, the Applicant's daughter, the Petitioner on the derivative U petition, was the person who properly signed the form under penalty of perjury. While we acknowledge that the Petitioner was the signatory of the derivative U petition under oath, the Applicant remained the signatory of the associated waiver

application, where she did not disclose this additional ground of inadmissibility at the time of filing. As previously stated in our decision, because the Applicant did not specify this additional applicable ground of inadmissibility as required by the form instructions, she remains inadmissible under section 212(a)(6)(C)(i) of the Act and she has not received a waiver for this separate ground of inadmissibility.

The Applicant further contends, through counsel, that we erroneously concluded that the approval of the waiver application specified that the grounds of inadmissibility were for sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(I) of the Act only. The Applicant states that this is unsupported by the record where the notice of approval of the waiver application specifically states that the waiver is granted pursuant to section 212(d)(14) of the Act, and does reference any other subsection of section of 212 of Act. However, this assumption is incorrect. Section 212(d)(14) of the Act affords USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion for nonimmigrants described in section 101(a)(15)(U) of the Act. It is therefore the correct citation in reference to our general authority to grant the waiver. Moreover, although not specifically listed on the Notice of Approval of the waiver application, the grounds of inadmissibility waived for the Applicant were based on that provided with the derivative U petition and associated waiver application only and, accordingly, was limited to sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(I) of the Act only.

The Applicant's arguments, on motion to reconsider, do not demonstrate any error in our prior decision. Accordingly, she remains ineligible for adjustment of status under section 245(m) of the Act.

III. CONCLUSION

The Applicant has not demonstrated any error of law or policy in our decision dismissing her appeal.

ORDER: The motion to reconsider is dismissed.