U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24118098

Date: DEC. 22, 2022

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U nonimmigrant classification 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, concluding that he did not establish his admissibility and his corresponding Form I-192, Application for Advance Permission to Enter as Nonimmigrant, to waive his inadmissibility had been denied as a matter of discretion. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

To establish eligibility for U nonimmigrant classification, petitioners 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.l(a)(3)(i). To meet this burden, a petitioner must file the Form I-192 in conjunction with the Form I-918, requesting waiver of any grounds of inadmissibility. 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv). U.S. Citizenship and Immigration Services 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). The denial of a waiver 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.

The Director determined that the Petitioner was inadmissible under sections 212(a)(6)(A)(i) as an alien present without admission or parole, 212(a)(6)(E)(i) for alien smuggling, 212(a)(9)(B)(i)(II) as an alien (other than an alien lawfully admitted for permanent residence) 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 their departure, and 212(a)(9)(C)(i)(I) of the Act, as an alien unlawfully present in the United States for an aggregate period of more than one year who entered the United States without being admitted. The Petitioner had sought a waiver of these grounds of inadmissibility through the filing of a Form I-192. The Director denied the waiver request, however, as a matter of discretion. Noting that that the Petitioner's Form I-192 had been denied, the Director then determined that the Petitioner had not established his admissibility, or that the applicable grounds of inadmissibility had been waived, and denied his Form I-918.

On appeal, the Petitioner claims the Director's conclusion that he was inadmissible under section 212(a)(9)(B)(i)(II) of the Act was incorrect because of changes to USCIS policy issued on June 24, 2022. *See generally* USCIS Policy Memorandum PA-2022-15, *INA 212(a)(9)(B) Policy Manual Guidance* 1 (Jun. 24, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220624-INA212a9B.pdf. The guidance explains that a noncitizen who seeks admission more than 10 years after their last departure is not inadmissible under INA 212(a)(9)(B) even if they returned to the United States without authorization during the 10-year period. While the Director's decision may have been correct at the time it was issued, the record reflects that if the Petitioner last entered the United States as he claims in 2005 and has not left since that time, any 10-year period after his last departure would have already expired. The record is sufficient to establish more than 10 years has passed since the Petitioner's last departure. Accordingly, we will withdraw the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Although we have withdrawn the ground for inadmissibility under section 212(a)(9)(B)(i)(II), the Petitioner does not contest the Director's determination of inadmissibility regarding sections 212(a)(6)(A)(i), 212(a)(6)(E)(i), or 212(a)(9)(C)(I) of the Act. As stated above, our review on appeal is limited to whether the Petitioner is in fact inadmissible to the United States and, if so, on what grounds. We do not have the authority to review the Director's discretionary determination on his waiver application. As the Petitioner does not contest the above-listed remaining grounds of inadmissibility, has not presented any arguments or evidence that the Director erred in finding him inadmissible to the United States based on those grounds, and his admissibility has not been waived, he has not overcome the grounds for the Director's dismissal.

The Petitioner has not established that he is admissible to the United States or that the applicable grounds of inadmissibility have been waived. Accordingly, he is ineligible for U nonimmigrant classification.

ORDER: The appeal is dismissed.