U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17499265

Date: FEB. 28, 2022

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks "U-1" 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 Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), because the record established that the Petitioner was inadmissible to the United States and her Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), requesting a waiver of the grounds of inadmissibility under section 212(a)(6)(A)(i) of the Act (present in the United States without admission or parole), had been denied. In our decision on appeal, which we incorporate herein, we concluded that the Petitioner was ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act because she was inadmissible. We further stated that her waiver application had been denied and we did not have jurisdiction over the Director's discretionary denial of the waiver application. Finally, we noted that the record copy of the Petitioner's passport showed that it was expired and therefore she also appeared to be inadmissible under section 212(a)(7)(B)(i)(I) of the Act (nonimmigrant not in possession of valid passport). The Petitioner has filed a timely motion to reopen and reconsider.

On motion to reopen and reconsider, the Petitioner asserts that our dismissal of the U petition appeal was premature because she had a pending motion to reopen and reconsider her waiver application denial, and provides a copy of a 2019 Form I-797C, Notice of Action, reflecting that the motion to reopen her waiver application was pending.[1] She also asserts that she has an unexpired passport and submits a copy of the first page of her 2019 Salvadoran passport.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Upon review, we will dismiss both motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy, and was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

[1] As of the date of this decision, the appeal of the denied waiver application remains pending.

II. ANALYSIS

The issue on motion is whether the Petitioner has established that our prior decision to dismiss the appeal was erroneous based on evidence of new facts or an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security (DHS) policy. We conclude, upon review, that she has established neither scenario.

The Petitioner, a native and citizen of El Salvador, claims to have last entered the United States without admission or parole in August 2011. She filed the U petition in October 2014 based on having been a victim of a crime that occurred in 2014. The Director denied the petition, stating that the Petitioner was ineligible for U nonimmigrant status because she was inadmissible under section 212(a)(6)(A)(i) of the Act and her waiver application seeking a waiver of her inadmissibility had been denied. In our appellate decision, we concluded that the Applicant was not eligible for U nonimmigrant status because had not shown that she was admissible under section 212(a)(6)(A)(i) of the Act and also noted that because the record copy of her passport was expired, she appeared to be in admissible under section 212(a)(7)(B)(i)(I) of the Act.

On motion, the Petitioner submits a copy of the first page of her Salvadoran passport showing that it was issued in July 2019 and expires in July 2025. Because she has now shown that she had a valid passport, we withdraw our statement regarding her potential inadmissibility under section 212(a)(7)(B)(i)(I) of the Act. Nevertheless, upon review, the Petitioner has not overcome our prior decision to dismiss the appeal based on her ineligibility for U nonimmigrant classification due to her inadmissibility under section 212(a)(6)(A)(i) of the Act and lack of an approved waiver application.

On motion, the Petitioner contends that we should not have adjudicated the U petition appeal while the motion on her denied waiver application was pending. She asks that we reopen and reconsider our decision to dismiss the appeal until the motion on her denied waiver application is adjudicated. However, the Petitioner does not include new facts supported by evidence, or cite to a statute, regulation, or USCIS or DHS policy or precedent decision for the proposition that a U petition appeal must be held in abeyance while a separate motion on a denied waiver application is pending.[2] Consequently, she has not shown on motion that our prior decision, *i.e.*, that she is ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act because she is inadmissible under section 212(a)(6)(A)(i) of the Act, was erroneous based on evidence of new facts or an incorrect application of law or USCIS or DHS policy or precedent decision.

[2] In contrast, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case. 8 C.F.R. § 103.5(a)(1)(iv).

III. CONCLUSION

The Petitioner has not met her burden of demonstrating that our prior determination was erroneous based on evidence of new facts or an incorrect application of law, policy, or precedent decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.