U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18395253

Date: MAR. 29, 2022

Appeal of Vermont Service Center Decision

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 Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner had not established he was admissible to the United States, as required. In a separate decision issued on the same day, the Director also denied the Petitioner's Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), finding that the Petitioner was inadmissible and did not establish that a waiver of the applicable grounds of inadmissibility was warranted as a matter of discretion. The denial of the U petition is now before us on appeal. On appeal, the Petitioner submits a brief reasserting his eligibility and asking that the appeal of the U petition be adjudicated "as if the motion to reconsider and/or motion to reopen of the [waiver application] is granted."[1] The Administrative Appeals Office reviews 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) determines whether a petitioner is inadmissible—and, if so, on what grounds—when adjudicating a U petition, 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).

A petitioner bears the burden of establishing that he 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). 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 denial of a waiver application 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.

[1] In October 2021, the Director dismissed the Petitioner's subsequent motion to reopen and motion to reconsider the waiver application.

II. ANALYSIS

The Petitioner entered the United States without inspection, admission, or parole on or about May 1998. The Petitioner held Temporary Protected Status (TPS) from September 1999 until July 2005, and that status was revoked in [redacted] 2007, after criminal convictions. In [redacted] 2009, removal proceedings were initiated against the Petitioner and he was ordered removed by an Immigration Judge *in absentia* for failing to appear for a hearing in [redacted] 2009. However, in [redacted] 2017, the Immigration Judge reopened and administratively closed the Petitioner's removal proceedings.[2]

The Director denied the U petition in March 2021, concluding that the Petitioner did not establish his admissibility. The Director concurrently denied the waiver application, finding that the Petitioner was inadmissible under sections 212(a)(6)(A)(i) (present in the United States without being admitted or paroled), 212(a)(6)(B) (failure to attend removal proceeding), and 212(a)(6)(C)(ii) (false claim to U.S. citizenship) of the Act, and that a favorable exercise of discretion was not warranted.

On appeal, the Petitioner argues, through counsel, that the Director's conclusions regarding his inadmissibility were erroneous. First, in reference to section 212(a)(6)(A)(i) (present in the United States without being admitted or paroled) of the Act, the Petitioner's counsel states that "entry without inspection is not, in and of itself, a ground of inadmissibility." This is incorrect. The Act clearly states that "[a foreign national] present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." Thus, the Director correctly determined that the Petitioner is inadmissible pursuant to section 212(a)(6)(A)(i) of the Act.

Next, in reference to section 212(a)(6)(B) (failure to attend removal proceeding) of the Act, the Petitioner's counsel states that the Petitioner's non-appearance at the court hearing "was ruled waived by the [Immigration Judge] during the deportation proceedings which were dismissed by the [Immigration Judge, and] that non-appearance was dismissed as well and cannot be counted against him under the concept of double jeopardy." While counsel's argument is incorrect, we conclude that the Director erred in finding that the Petitioner is inadmissible on this ground. Section 212(a)(6)(B) of the Act (stating that "[any foreign national] who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the [foreign national's] inadmissibility or deportability and who *seeks admission to the United States within [five] years of such [foreign national's] subsequent departure or removal* is inadmissible") specifically indicates that the Petitioner must seek admission to enter the U.S. within five years of his subsequent departure in order to trigger this ground of inadmissibility. According to the record, the Petitioner has not left the United States since his entry in May 1998, thus he has not triggered this ground of inadmissibility.

Finally, in reference to section 212(a)(6)(C)(ii) (false claim to U.S. citizenship) of the Act, the Petitioner's counsel states that "[the Petitioner's] employer is who filled out his job application" indicating that he was a U.S. citizen. He further states that the Petitioner did not speak English and

[2] Administrative closure removes a case from an Immigration Judge's active docket, but does not result in a final order and is not equivalent to the termination of removal proceedings. *Matter of Avetisyan*, 25 I&N Dec. 688, 695 (BIA 2012).

"trusted [the] employer had filled [the form] out correctly, checking the proper boxes, and [the Petitioner] signed the application." However, as the Director correctly found, this conduct triggered an additional applicable inadmissibility ground under section 212(a)(6)(C)(ii) of the Act, which specifically provides that individuals who falsely represent themselves as a U.S. citizen for any purpose or benefit under the Act or "any other Federal or State law" is inadmissible. Further, if another person makes the false representation of U.S. citizenship on behalf of the Petitioner, the Petitioner is held responsible and cannot deny responsibility for any misrepresentation made by him based on the advice of another person. *See* 8 *USCIS Policy Manual* K.2(D)(6), https://www.uscis.gov/policy-manual (providing, as guidance, that the petitioner remains responsible for a false claim to U.S. citizenship made by their "[a]gent or [r]epresentative" and cannot deny responsibility for any misrepresentation made based on the advice of another person). Thus, the Director correctly determined that the Petitioner is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act.

The Petitioner additionally disputes the Director's discretionary determination, discussing evidence in the record of mitigating factors for consideration in the adjudication of the underlying waiver application. As previously indicated, however, our appellate review is limited to whether the Director's inadmissibility determination was correct; we do not have the authority to review the Director's discretionary determination. Although we withdraw the applicability of section 212(a)(6)(B) (failure to attend removal proceeding) of the Act, the Petitioner remains inadmissible pursuant to sections 212(a)(6)(A)(i) (present in the United States without being admitted or paroled) and 212(a)(6)(C)(ii) (false claim to U.S. citizenship) of the Act. Accordingly, the Petitioner has not established that he is admissible to the United States or that the remaining applicable grounds of inadmissibility have been waived.

III. CONCLUSION

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 nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.