U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: AUG 30 2013 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: PETITIONER: [redacted]

APPLICATION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

Section 101(a)(15)(U)(i) of the Act, provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. Section 212(d)(14) of the Act requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

The director denied the Form I-918 U petition because although the petitioner met the criteria for U-1 nonimmigrant status at section 101(a)(15)(U)(i)(I) of the Act, the petitioner was inadmissible to the United States and his request for a waiver of inadmissibility (Form I-192, Application for Advance Permission to Enter as Nonimmigrant) had been denied.[1]

On appeal, counsel claims that the petitioner may not be inadmissible because he is in the United States and he has been rehabilitated through his ten-year incarceration.

Analysis

All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility. The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of a decision to deny a waiver." As the AAO does not have jurisdiction to review whether the director properly denied the Form I-192, the AAO does not consider whether approval of the Form I-192 should have been granted. The only issue before the AAO is whether the director was correct in finding the petitioner inadmissible to the United States and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

A full review of the record supports the director's determination that the petitioner is inadmissible under subsections 212(a)(2)(A)(i)(I) (conviction of crimes involving moral turpitude), (a)(2)(A)(i)(II) (controlled substance violations), (a)(2)(B) (multiple offenses, five year sentence), (a)(7)(B)(i)(I) (not in possession of a valid passport), and (a)(9)(A)(ii)(I) (aliens ordered removed) of the Act.

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[1] The petitioner's second Form I-192, received on January 16, 2013, Rec. Num [redacted] was also denied.

The record shows that the petitioner was convicted of:

- criminal possession of a controlled substance (cocaine) in violation of section 220.03 of the New York Penal Law (NYPL) in 1995, for which he was sentenced to 3 years of probation;
- petit larceny in violation of NYPL § 155.25 in 1996, for which he was sentenced to 3 years of probation and then 6 months of imprisonment upon his violation of probation;
- criminal possession of marijuana in violation of NYPL § 221.15 in 1997, for which he was sentenced to 90 days incarceration;
- attempted criminal possession of marijuana in violation of NYPL § 221.25 in 1999, for which he was sentenced to 5 years of probation and then 1 year of imprisonment upon his violation of probation;
- criminal possession of a controlled substance with intent to sell in violation of NYPL § 220.16 in 2002, for which he was sentenced to 8 to 16 years imprisonment; and
- robbery with display of what appears to be a firearm in violation of NYPL § 160.15 in 2002, for which he was sentenced to 8 years imprisonment.

The petitioner's convictions for petit larceny and robbery are convictions for crimes involving moral turpitude. *See Matter of Martin,* 18 I&N Dec. 226, 227 (BIA 1982) (robbery); *Caesar v. Ashcroft*, 355 F.Supp. 2d 693, 703 (S.D.N.Y. 2005) (petit larceny under NYPL). Accordingly, the petitioner is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for being convicted of crimes involving moral turpitude.

Based on the petitioner's criminal convictions for possession of controlled substances, he is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act as a controlled substance violator. In addition, the petitioner's multiple convictions render him inadmissible under section 212(a)(2)(B) of the Act as someone who has been convicted of two or more offenses for which the aggregate sentences to confinement were 5 years or more.

The petitioner also has not submitted evidence that he has a valid passport, nor does he dispute his lack of a valid passport. As such, the petitioner is inadmissible under subsection 212(a)(7)(B)(i)(I) of the Act as well. In addition, the petitioner is inadmissible under section 212(a)(9)(A)(ii)(I) of the Act for being ordered removed from the United States on December 3, 1999.

The director found the petitioner inadmissible under section 212(a)(9)(C)(i)(II) of the Act for being unlawfully present after previous immigration violations. However, the evidence in the record does not establish that the petitioner has attempted to reenter the United States without being admitted. Therefore, he is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act. This portion of the director's decision will be withdrawn.

On appeal, counsel does not contest the petitioner's inadmissibility but instead focuses her assertions on why the director should have favorably exercised his discretion and determined that the petitioner had been rehabilitated.

The director denied the petitioner's application for a waiver of inadmissibility and we have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3).

Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Although the petitioner has met the statutory eligibility requirements for U nonimmigrant classification, he has not established that he is admissible to the United States or that his grounds of inadmissibility have been waived. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

ORDER: The appeal is dismissed. The petition remains denied.