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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUL 0 5 2013 Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:

PETITION: 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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), as an alien victim of certain qualifying criminal activity. The previous AAO decision is incorporated by reference, and we will not restate all the facts of the case here. On September 14, 2012, the director denied the Form I-918 petition and the Form I-192 application. In his decision on the Form I-918 petition, the director stated that the petitioner was ineligible for U nonimmigrant status because he was inadmissible and his request for a waiver of inadmissibility had been denied. The petitioner, through counsel, then timely filed an appeal with the AAO. The appeal was dismissed as the record shows that the petitioner is inadmissible to the United States on each of the grounds cited to by the director (and counsel does not dispute that the petitioner is inadmissible), and the AAO does not have jurisdiction to review whether the director properly denied the Form I-192 application.[1] The petitioner then timely filed the instant motion with the AAO.

The regulation at 8 C.F.R. § 103.5(a) states, in pertinent part:

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> (2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceedings and be supported by affidavits or other documentary evidence. . . .
>
> (3) Requirements for motion to reconsider. 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 Service policy. . . .

* * *

The petitioner has failed to meet either the requirements for a motion to reopen or a motion to reconsider. In his brief on motion, counsel failed to state any new facts to be proven as required. Counsel makes essentially the same arguments that he made in his October 24, 2012 brief to the AAO. The "Declaration of Arrest" submitted on motion does not address and is not relevant to the petitioner's inadmissibility to the United States for illegal entry and violation of a controlled substance law, on which the denial of his Form I-918 is based. As such, the motion to reopen must be dismissed. *See* 8 C.F.R. § 103.5(a)(2).

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[1] Given this lack of jurisdiction, the AAO does not consider whether approval of the Form I-192 application should have been granted. *See* 8 C.F.R. § 212.17(b)(3) ("There is no appeal of a decision to deny a waiver.") Therefore, the only issue before the AAO was whether the director was correct in finding the petitioner to be inadmissible and, therefore, requiring an approved Form I-192 application pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

Counsel also failed to establish that the director's decision or the subsequent AAO decision was based on an incorrect application of law or Service policy as required. Counsel still does not dispute that the petitioner is inadmissible under sections 212(a)(2) and (6) of the Act and that his Form I-192 has been denied. As such, the motion to reconsider must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met.

**ORDER:** The motion is dismissed. The petition remains denied.