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: SEP 18 2014 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: PETITIONER: [redacted]

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:

[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 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), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

Applicable Law

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.

Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

> (6) Illegal Entrants and Immigration Violators
>
> (A) Aliens Present Without Permission or Parole
>
> (i) In General.-An alien 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.

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have initially entered the United States in 1983 without admission, inspection or parole. The petitioner claims to have departed and reentered the United States in 1993 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition on October 27, 2010. On February 17, 2011, the director issued a Request for Evidence (RFE) noting that the petitioner was inadmissible to the United States, and requesting an Application for Advance Permission to Enter as Nonimmigrant (Form I-192), a Report of Medical Examination (Form I-693), and a copy of the petitioner's passport. On May 13, 2011, the petitioner responded to the RFE with a Form I-192 and additional evidence, which the director found insufficient to overcome his ground of inadmissibility and she denied the Form I-192. The director determined that the petitioner was inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. The director denied the petitioner's Form I-918 U petition on the same day. Although the director determined that the petitioner was statutorily eligible for U nonimmigrant status, she denied the Form I-918 U petition because the petitioner was

inadmissible to the United States and his Form I-192 waiver of inadmissibility was denied. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner, through counsel, does not dispute that the petitioner is inadmissible to the United States but claims that the petitioner's waiver should be granted as a matter of discretion and in national or public interest. In support of her claims, counsel submits a statement, a new Form I-192[1], additional evidence, and documents already included in the record.

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 we do not have jurisdiction to review whether the director properly denied the Form I-192, we do not consider whether approval of the Form I-192 should have been granted. The issue before us 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 section 212(a)(6)(A)(i) (present without admission or parole) of the Act. The petitioner does not dispute that he is present in the United States without admission or parole. As noted above, the petitioner admits to last entering the United States in 1993 without inspection. As such, the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act.

We note that in denying the second Form I-192, the director determined that the petitioner was inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole) and 212(a)(9)(C) of the Act. No period of unlawful presence in the United States prior to April 1, 2007 is considered for purposes of applying section 212(a)(9)(C)(i)(I) of the Act, and section 212(a)(9)(C)(i)(II) of the Act "applies to those aliens ordered removed before or after April 1, 1997, and who enter or attempt to reenter the United States unlawfully any time on or after April 1, 1997. *See Memorandum by Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs, Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Immigration and Nationality Act*, dated June 17, 1997.

The record shows that the petitioner's last entry into the United States without inspection occurred in 1993 and there is no evidence that he has departed the United States since his last entry; therefore, he did not accrue unlawful presence before his last entry without inspection in 1993. There is also no evidence in the record that the petitioner has been ordered removed from the United States. Accordingly, the petitioner is not inadmissible under section 212(a)(9)(C)(i)(I) (unlawfully present in the United States for one year or

[1] This second Form I-192, receipt number [redacted] filed on April 9, 2014, was denied by the director on May 9, 2014.

more and reentering the United States without being admitted) or section 212(a)(9)(C)(i)(II) (being ordered removed and reentering the United States without being admitted) of the Act.

On appeal, counsel does not contest the petitioner's grounds of inadmissibility but instead focuses her assertions on why the director should have favorably exercised her discretion and approved his Form I-192 waiver request. 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). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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