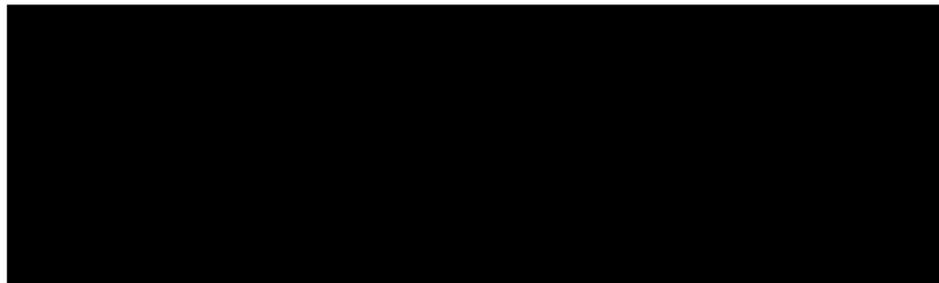


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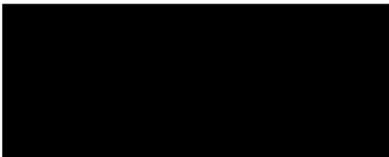
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



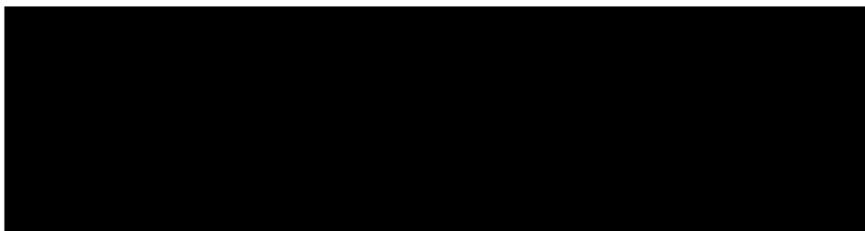
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DATE: Office: VERMONT SERVICE CENTER FILE: 
50475 OCT 18 2011

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:

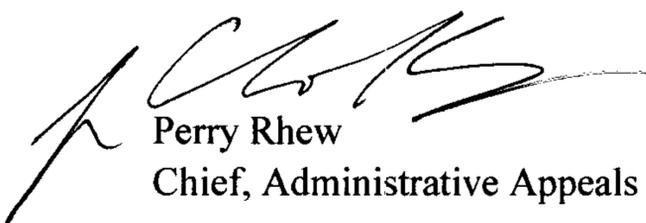


INSTRUCTIONS:

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 law was inappropriately applied by us 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. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and affirmed the denial upon granting a subsequent motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

The director denied the petition because the petitioner is not admissible to the United States and his request for an advanced waiver of inadmissibility (Form I-192) was denied. On appeal, counsel submits a brief and additional evidence.

Section 101(a)(15)(U) 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, as well as the victims’ qualifying family members. 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 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

The petitioner is a native and citizen of El Salvador who filed the Form I-918 U petition on November 8, 2007. The petitioner subsequently filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, on October 28, 2009. The director issued a Notice of Intent to Deny (NOID) the petition on September 25, 2009 asking the petitioner to submit, among other items, dispositions of his various arrests. The petitioner, through counsel, responded to the NOID. On August 5, 2010, the director denied the Form I-918 petition and the Form I-192 application.¹ In his decision on the Form I-918 petition, the director stated that the petitioner was not eligible for U nonimmigrant status because he was inadmissible and his request for a waiver of inadmissibility had been denied. The petitioner filed a motion to reopen and reconsider, and on January 6, 2011, the director affirmed his denial of the petition. The petitioner timely appealed that denial. On appeal, counsel does not dispute the petitioner’s inadmissibility but argues that the director abused his discretion in not granting the petitioner’s waiver request.

For aliens 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 application 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 application, the AAO does not consider whether approval of the Form I-192 application should have been granted. The only issue before the AAO is whether the director was correct in finding the petitioner to be inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

¹ The director remailed his decisions to the petitioner on August 31, 2010.

The director did not find the petitioner ineligible for U nonimmigrant status for any reason other than his inadmissibility. It appears, therefore, that the director determined that the petitioner met all the statutory eligibility criteria for U nonimmigrant status, but concluded that he could not be granted such status because he was found to be inadmissible and ineligible for a waiver of inadmissibility.

The record indicates that the petitioner claims to have entered the United States in 1992 without being inspected, admitted or paroled by a legacy Immigration and Naturalization Services (INS) officer. The petitioner is, therefore, inadmissible under section 212(a)(6)(A)(i) of the Act as an illegal entrant.

In addition, the petitioner's criminal history includes a November 17, 2004 conviction in the State of Washington for possession of a controlled substance – cocaine.² The petitioner is, therefore, also inadmissible under section 212(a)(2)(A)(i)(II) of the Act as a controlled substance violator.

Conclusion

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). 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).

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

² Superior Court of Washington, Snohomish County, Case number [REDACTED]