

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**



D14

Date: **APR 12 2012**

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:

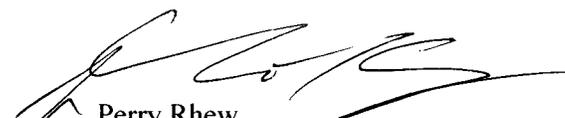
SELF-REPRESENTED¹

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

¹ The petitioner's appeal was filed on February 8, 2011 by Rosaura Del Carmen Rodriguez who subsequently, on September 14, 2011, was immediately suspended from the practice of law before the Board of Immigration Appeals, the Immigration Courts and the Department of Homeland Security. Accordingly, the petitioner is self-represented in this proceeding.

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.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification to:

(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien . . . possesses information concerning criminal activity described in clause (iii);

(III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

In addition, like all other nonimmigrants, petitioners for U classification 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 an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Factual and Procedural History

The petitioner is a native and citizen of Guatemala who claims to have entered the United States in September 1999 without being inspected, admitted or paroled by an immigration officer. The petitioner he filed a Form I-918 U petition on December 24, 2007. The director subsequently notified the petitioner that he was inadmissible to the United States and requested that the petitioner submit a Form I-192. In response, the petitioner submitted a fee for the waiver application, noting that the Form I-192 had been previously submitted. The director denied the Form I-918 U petition because the petitioner is inadmissible to the United States under section 212(a)(6)(A)(i) of the Act (alien present without permission or parole), and section 212(a)(7)(B)(i) of the Act (a nonimmigrant who is not in possession of a valid passport), and he failed to submit a Form I-192 to waive these grounds of inadmissibility. On appeal, the petitioner asserts that he filed a Form I-192 when he filed his Form I-918 U petition in 2007, and submits a copy of a Form I-192.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find no error in the director's decision to deny the petition.

The filing date of an application is the date that the application is accepted by U.S. Citizenship and Immigration Services (USCIS) as properly filed. The regulation at 8 C.F.R. § 103.2(a)(7)(i) states: "an application or petition received in a USCIS office shall be stamped to show the time and date of actual receipt and . . . shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached . . ." (Emphasis added). The petitioner contends on appeal that he submitted a Form I-192 when filing his Form I-918 U petition in 2007 and provides a copy of a Form I-192 signed by him on December 12, 2007. However, the petitioner does not submit any evidence that the Vermont Service Center (VSC) received the original of this waiver application and any associated filing fees, or that the VSC granted a fee waiver.² While the petitioner states that the evidence of filing the waiver application is the VSC's return of his Form

² Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

I-192 fee, a review of the record reveals that the director's January 2010 RFE requested the submission of a Form I-192 from the petitioner, and not an associated fee. Thus, the VSC returned the fee to the petitioner because it was not accompanied by the requested Form I-192. The record lacks any evidence that USCIS ever received a Form I-192 from the petitioner.

As noted by the director, the petitioner is inadmissible to the United States under section 212(a)(6)(A)(i) of the Act (alien present without permission or parole), and section 212(a)(7)(B)(i) of the Act (a nonimmigrant who is not in possession of a valid passport). We find no error in the director's determination of the petitioner's inadmissibility and the petitioner does not contest such determination.

Conclusion

The petitioner is inadmissible to the United States and he has not filed a request for a waiver of inadmissibility, as required by the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv). The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed. 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). Here, that burden has not been met.

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