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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

D14

DATE: **APR 26 2012** Office: VERMONT SERVICE CENTER

FILE

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:

SELF-REPRESENTED

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 of the Vermont Service Center (“the director”) denied the U nonimmigrant visa petition (Form I-918 U 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)(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, 8 U.S.C. § 1182(d)(14), 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.

Section 212(a) of the Act, 8 U.S.C. § 1182(a), sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

(2)(A) Conviction of certain crimes.

(i) In General. Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

* * *

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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 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.

Factual and Procedural History

The petitioner is a native and citizen of Vietnam who lost his status as a lawful permanent resident based upon an order of removal issued against him by an immigration judge on January 16, 2007. The petitioner filed the Form I-918 U petition on September 10, 2009. The petitioner subsequently filed a Form I-192 on May 7, 2010 due to his inadmissibility. 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 has timely appealed the denial of his Form I-198 U petition and on appeal he submits a statement relating to the reasons why he should be granted U nonimmigrant classification. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 application pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

Analysis

The director found the petitioner inadmissible under: section 212(a)(2)(A)(i)(I) of the Act, as an alien who has been convicted of a crime involving moral turpitude (CIMT); section 212(a)(2)(A)(i)(II) of the Act, as a controlled substance violator; section 237(a)(2)(B)(i), as a controlled substance violator; and section 237(a)(2)(A)(iii), as an alien who has been convicted of an aggravated felony. On appeal, the petitioner does not dispute his inadmissibility but instead focuses his assertions on why the director should have favorably exercised his discretion and approved the Form I-192. As stated earlier, the AAO does not have jurisdiction to consider whether the Form I-192 should have been approved. 8 C.F.R. § 212.17(b)(3). The AAO can only determine whether the inadmissibility grounds noted by the director apply to the petitioner.

We withdraw the director’s determination that the petitioner is inadmissible under section 212(a)(2)(A)(i)(I) for having been convicted of a CIMT, as the record contains no evidence of such a conviction. We also withdraw the director’s findings that the petitioner is inadmissible under any provision of section 237 of the Act, which prescribes grounds of deportability, not inadmissibility. As the petitioner is no longer a lawful permanent resident of the United States, section 237(a)(2)(B)(i) of the Act is inapplicable. We do, however, concur with the director that the petitioner is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for being a controlled substance violator.

On August 16, 2006, the petitioner was found guilty of selling and possessing methylenedioxymethamphetamine (MDMA, commonly known as “ecstasy”) in the State of Florida in violation of section 893.13 of the Florida Statutes.¹ The petitioner was sentenced to one year and one day of imprisonment, was ordered to pay \$1,746 in court costs, and had his driver’s license revoked for two years. MDMA is a Schedule I controlled substance as defined by the Controlled Substances Act. 21 U.S.C. §§ 802(6), 812 (2012). The petitioner is, therefore, inadmissible under section 212(a)(2)(A)(i)(II) of the Act as a controlled substance violator.

¹*Judgment*, Circuit Court, Sixth Judicial Circuit, Pinellas County, Florida, Case number [REDACTED]

Conclusion

As always 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). The petitioner has met the requirements of section 101(a)(15)(U)(i) of the Act, but has failed to establish his admissibility, as required for U nonimmigrant classification pursuant to section 212(d)(14) of the Act and the regulations at 8 C.F.R §§ 212.17, 214.1(a)(3)(i), 214.14(c)(2)(iv).

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