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



U.S. Citizenship
and Immigration
Services



D14

Date: JUL 17 2012 Office: VERMONT SERVICE CENTER File:

IN RE: Petitioner:

PETITION: Petition for Nonimmigrant Classification as a Victim of Qualifying Criminal Activity 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 AAO inappropriately applied the law in reaching its 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 motion 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 any motion to 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 (“the director”), denied the Petition for U Nonimmigrant Status (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.

Section 101(a)(15)(U)(i) of the Act, provides for U nonimmigrant classification to aliens who have suffered substantial physical or mental abuse as a result of having been the victim of certain criminal activity and 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.

The director denied the petition because the petitioner is not admissible to the United States and his Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) was denied. On appeal, the petitioner submits a Notice of Appeal (Form I-290B), a letter, additional evidence and copies of documentation already in the record. The petitioner does not dispute the director’s determination that he is inadmissible to the United States. Instead, the petitioner asserts that he is rehabilitated and merits a favorable exercise of discretion to waive his grounds of inadmissibility.

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 application in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility. There is no appeal of a decision to deny a Form I-192 waiver application. 8 C.F.R. § 212.17(b)(3). Consequently, the AAO lacks jurisdiction to review whether the director properly denied the Form I-192 waiver application. The only issue before the AAO on appeal is whether the director was correct in finding the petitioner to be inadmissible and requiring an approved waiver pursuant to the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

The record contains evidence of the petitioner’s following convictions:

- August 18, 2005- pled nolo contendere to violating section 647(f) of the California Penal Code (CPC) (disorderly conduct-under the influence/intoxicated) and was sentenced to 17 days in jail and a fine.
- November 13, 2007- pled nolo contendere to violating section 11550(A) of the California Health and Safety Code (CHSC) (use/under the influence of a controlled substance, methamphetamine); on December 3, 2007, imposition of sentence was suspended and the petitioner was granted probation which was terminated on February 23, 2009.

- November 18, 2008- convicted of violating section 12301(a)(1) of the CPC (carrying a concealed and unregistered weapon in a vehicle) and was sentenced to 180 days in jail and 36 months of probation. The Information in regard to this conviction indicates that the petitioner was previously convicted of violating section 11377 of the CHSC (possession of a controlled substance) and section 594(a) (vandalism/property damage); however, the petitioner has failed to provide sufficient documentation in regard to these convictions.

The petitioner is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for his convictions relating to a controlled substance (use/under the influence of methamphetamine and possession of a controlled substance).¹ Furthermore, the petitioner is inadmissible under section 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A), for being present in the United States without admission or parole.²

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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). On appeal, the petitioner has failed to establish his admissibility and eligibility for U nonimmigrant classification. The petitioner is inadmissible under sections 212(a)(2)(A)(i)(II) and 212(a)(6)(A) of the Act and his Form I-192 has been denied. 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.

¹ Pursuant to section 101(a)(48) of the Act, the petitioner's diversion or probation in regard to the use/under the influence of a controlled substance is a conviction for immigration purposes.

² The petitioner claimed that he entered the United States without inspection, admission or parole in June 1989.