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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: **JUN 18 2012** Office: VERMONT SERVICE CENTER

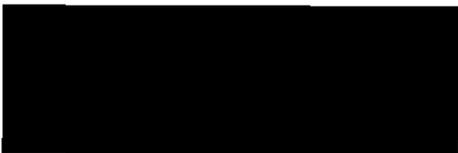


IN RE: Petitioner:



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. § 101(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 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 with the field office or service center that originally decided your case by filing a 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 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 director denied the petition because the petitioner is not admissible to the United States and her request for a waiver of inadmissibility (Form I-192) was denied. On appeal, counsel submits a brief.

Applicable Law

Section 101(a)(15)(U)(i) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(U)(i), 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-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(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.

(6)(A) Aliens Present Without Admission 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 [Secretary of Homeland Security], is inadmissible.

* * *

(6)(C) Misrepresentation.-

(i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) Falsely Claiming Citizenship-

(I) In General- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(7)(B) Nonimmigrants.

(i) In general.-Any nonimmigrant who-

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period . . .

is inadmissible.

(9)(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law . . .

is inadmissible.

(9)(B) Aliens Unlawfully Present.

(i) In general. Any alien (other than an alien lawfully admitted for permanent residence) who-

* * *

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence. For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the [Secretary of Homeland Security] or is present in the United States without being admitted or paroled.

(9)(C) Aliens Unlawfully Present After Previous Immigration Violations.

(i) In general. Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year . . .

is inadmissible.

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 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 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).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who admits she entered the United States multiple times without inspection, made a false claim to U.S. citizenship, attempted to enter the United States with false documents, has been convicted of illegal re-entry into the United States twice, brought her daughters to the United States illegally when they were young, and was convicted of drug possession. The petitioner filed the Form I-918 U petition and Form I-192 waiver application concurrently on May 25, 2010. On November 29, 2011, the director denied the Form I-192 waiver application as well as the Form I-918 U petition. In his decision on the Form I-918 U petition, the director stated that the petitioner was not eligible for U nonimmigrant status because she was inadmissible and her request for a waiver of inadmissibility had been denied. On appeal of the denial of the Form I-918 U petition, counsel submits a brief. Counsel does not dispute the director's determination that the petitioner is inadmissible to the United States. Instead, counsel asserts that

the petitioner merits a favorable exercise of discretion to waive the multiple 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 accordingly required an approved waiver pursuant to the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

Analysis

On October 16, 1995, the petitioner was sentenced to 1.5 years for violation of Arizona Revised Statutes (ARS) sections 13-3408, 13-3401, 13-701, 13-702, and 13-801 - possession of a narcotic drug, a class 4 felony. On November 20, 2008, the petitioner pled guilty to illegal re-entry into the United States in violation of 8 U.S.C. § 1326 and was sentenced to serve eight months. On October 22, 2009 the petitioner pled guilty to re-entry after deportation, a violation of 8 U.S.C. § 1326(a) and 8 U.S.C. § 1326(b)(1) and was sentenced to serve eight months.

The director determined that the petitioner was inadmissible to the United States pursuant to the following sections of the Act: 212(a)(2)(A)(i)(I) – conviction of a crime involving moral turpitude (CIMT); 212(a)(2)(A)(i)(II) – controlled substance violation; 212(a)(6)(A)(i) – aliens present without being admitted; 212(a)(6)(C)(i) – fraud and/or willful misrepresentation; 212(a)(9)(A)(i) – alien previously removed, as an arriving alien; 212(a)(9)(A)(ii) – alien previously removed other than an arriving alien; and 212(a)(7)(B)(i)(I) – nonimmigrant without a valid passport.

The record indicates that the petitioner entered the United States without being inspected, admitted or paroled by an immigration officer. The petitioner is thus inadmissible under section 212(a)(6)(A)(i) of the Act. The record also shows that the petitioner attempted to enter the United States using false documents and made a false claim of U.S. citizenship. The petitioner is therefore inadmissible under sections 212(a)(6)(C)(i) and (ii) of the Act. In addition, the petitioner pled guilty to illegal re-entry into the United States in violation of 8 U.S.C. § 1326 and was sentenced in November 2008 and pled guilty to re-entry after deportation in violation of 8 U.S.C. § 1326(a) and 8 U.S.C. § 1326(b)(1) and was sentenced in October 2009. Accordingly, the petitioner is inadmissible under section 212(a)(9) of the Act. Further, the petitioner's criminal history includes an October 16, 1995 conviction for drug possession - cocaine; thus, she is inadmissible under section 212(a)(2)(A)(i)(II) of the Act as a controlled substance violator.

The record does not show that the petitioner was convicted of a crime involving moral turpitude (CIMT) and, thus, there is no information that she is inadmissible on that ground. The director's decision to the contrary is withdrawn.

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 appears to have met the statutory eligibility requirements for U nonimmigrant classification, she is inadmissible under the sections of the Act noted previously and her application to waive these grounds of inadmissibility has been denied. She 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).

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. Accordingly, the appeal will be dismissed.

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