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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

814



Date: Office: VERMONT SERVICE CENTER

JUN 18 2012



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 Form I-918 U petition because the petitioner is not admissible to the United States and his 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 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 . . .

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, or

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission, is inadmissible.

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

(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, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date 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.

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, required an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

Factual and Procedural History

The petitioner is a native and citizen of Mexico who entered the United States without being admitted or inspected by an immigration officer. The petitioner was deported on or about February 23, 1995, again on or about May 3, 2000, and again on November 12, 2002. On or about February 27, 2010, the petitioner who was again in the United States without being admitted or paroled was informed of the decision to reinstate his prior order of deportation. The petitioner filed the Form I-918 U petition on August 27, 2010. The petitioner also requested a stay of deportation pending the adjudication of the Form I-918. The stay of deportation was granted; however the petitioner was removed to Mexico. According to counsel, the petitioner was later paroled into the United States to continue the pursuit of this Form I-918. The petitioner filed his first Form I-192, on August 27, 2010.¹ The director issued a request for evidence (RFE) on January 14, 2011, asking the petitioner to submit the dispositions of his five arrests occurring between 1991 and 2000.² The petitioner, through counsel, responded to the RFE. On September 1, 2011, the director denied the Form I-918 petition and the Form I-192 application. The director did not find the petitioner ineligible for U

¹ The petitioner filed a second Form I-192 (EAC 12 039 50500) on October 3, 2011, which was denied by the director on January 23, 2012.

² The petitioner was arrested again on October 1, 2010 by the Brownsville Police Department and charged with public intoxication.

nonimmigrant status for any reason other than his inadmissibility.³ The petitioner timely appealed that denial. On appeal, counsel submits a brief, the second Form I-192, and other documentation.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence. 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 U.S.C. § 1184(p)(4).

In denying the Form I-192, the director noted that the petitioner did not have a valid passport, and that he was removed and re-entered the United States on more than one occasion. The director also referenced the petitioner's five arrests:

- A February 19, 1991 arrest in Brownsville, Texas (Agency Case [REDACTED]) for driving under the influence of liquor resulting in a conviction and sentence of 12 months probation.
- A July 2, 1993 arrest (Agency Case [REDACTED]) for terroristic threats resulting in a conviction and sentence of three months in jail, three months suspended, and six months probation.
- An April 30, 1994 arrest in Brownsville, Texas (Agency Case [REDACTED]) for driving while intoxicated with an unknown disposition.
- An April 30, 1996 arrest in Brownsville, Texas ([REDACTED]) for assault causing bodily injury resulting in a conviction and sentence of 12 months in jail, 24 months probation, a fine, and court costs.
- An October 1, 2000 arrest in Olmito, Texas ([REDACTED]) for driving while intoxicated resulting in a conviction and sentence of 60 days in jail and court costs.

On appeal, counsel does not dispute that the petitioner is inadmissible on some grounds but asserts that he is not inadmissible due to being convicted for a crime involving moral turpitude (CIMT) under section 212(a)(2)(A)(i)(I) of the Act. Counsel contends that the director did not specify which conviction(s) constituted a conviction for a CIMT and asserts that the director's finding that the petitioner was convicted of a CIMT prejudiced the director when adjudicating the Form I-192 waiver.

Upon review of the record, the petitioner has not provided evidence on appeal sufficient to overcome the director's determination that the petitioner is inadmissible for having been

³ It appears 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.

convicted of a CIMT. The director requested copies of the arrest report(s) and court documents showing the final disposition of the charges for all the petitioner's arrests. Counsel, in response to the RFE, stated that she had contacted the appropriate arresting agencies but that no reports were available from the time period. Counsel, however, provided no evidence from the arresting agencies attesting to the unavailability of the requested records. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record includes a police report of the petitioner's arrest in February 1991 for driving while under the influence and a police narrative relating to the petitioner's arrest in July 1993 for terroristic threats, which involved a domestic argument. The record does not include any information regarding the petitioner's two arrests for driving while intoxicated, one of which resulted in a conviction and another for which there was no known disposition. Nor does the record include any information regarding the petitioner's arrest and conviction for assault causing bodily injury and, thus, the petitioner has failed to establish that his assault conviction did not involve some aggravating dimension, such as the use of a deadly weapon, or serious bodily harm upon a person whom society views as deserving of special protection, such as a child, a domestic partner, or a peace officer. *Matter of Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006). Accordingly, the petitioner has not overcome the director's finding that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The petitioner is also inadmissible pursuant to section 212(a)(7)(B)(i)(II) of the Act as a nonimmigrant not in possession of a valid passport and section 212(a)(9)(A)(ii) of the Act as an alien previously removed and who seeks admission within 20 years of his removal.

Conclusion

Although the petitioner has met the statutory eligibility requirements for U nonimmigrant classification, he is inadmissible under sections 212(a)(2)(A)(i)(I), 212(a)(7)(B)(i)(II), and 212(a)(9)(A)(ii) of the Act and his application to waive these grounds of inadmissibility has been denied. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) 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.