

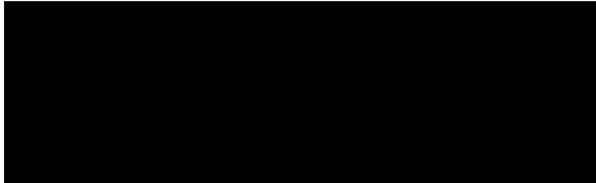
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **MAY 16 2012**

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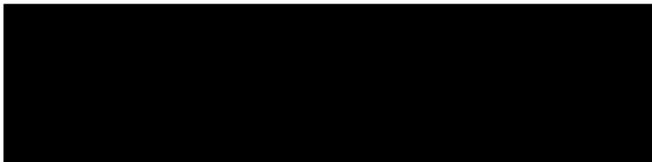
IN RE:

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.

Applicable Law

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), which provides, in pertinent part, for U nonimmigrant classification:

(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, U nonimmigrants must show that they are admissible to the United States, or that all inadmissibility grounds have been waived. See 8 C.F.R. § 214.1(a)(3)(i); 8 C.F.R. § 214.14(c)(2)(iv).

Facts and Procedural History

The petitioner is a native and citizen of India who entered the United States on January 17, 1998 on a P-3 visa. On January 23, 1998 he married [REDACTED] who filed a Form I-130, Petition for Alien Relative, on his behalf. The petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status, stating that he was the spouse of a United States citizen. On March 9, 1999, the Form I-130 was denied because [REDACTED] offered a sworn statement admitting the marriage had been entered into solely for the promise of thirty thousand dollars and for the purpose of helping the petitioner obtain permanent residence in the United States.

The petitioner filed the instant Form I-918 U petition on January 11, 2011 as well as a Form I-192, Application for Advance Permission to Enter as Nonimmigrant. On May 6, 2011, the director issued a Request for Evidence (RFE) to provide the petitioner with an opportunity to submit additional evidence in support of his claim. In response, the petitioner provided a July 15, 2011 declaration admitting that he had entered into a sham marriage in 1998 and that he took full responsibility for his conduct. On September 2, 2011, the director denied the Form I-192 waiver application and the Form I-918 U petition. In his decision on the Form I-918 U 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.² On appeal of the denial of the Form I-918 U petition, counsel submits a brief. Counsel acknowledges that the petitioner "candidly admitted that he entered into a sham marriage" but asserts that the director abused his discretion when denying the petitioner's Form I-192. 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 this ground 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 Petitioner is Inadmissible Due to the Fraudulent Marriage He Entered Into to Obtain an Immigration Benefit

¹ Name withheld to protect the individual's identity.

² On September 2, 2011, the director denied the petitioner's Form I-192, determining that the petitioner was inadmissible under section 212(a)(6)(C)(i) of the Act (fraud/misrepresentation), based on the petitioner's admission that he had married T-C- in order to obtain an immigration benefit.

Section 212(a)(6)(C)(i) of the Act states:

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.

In *Matter of G-G*, I&N Dec. 161 (BIA 1956), the Board of Immigration Appeals (BIA) held that “fraud” consists of a false representation of a material fact made with knowledge of its falsity and with intent to deceive the immigration officer, who then acts upon his or her belief of the fraud. Willful misrepresentation occurs when the misrepresentation was deliberate and voluntary. *Forbes v. I.N.S.*, 48 F.3d 439, 442 (9th Cir. 1995). Proof of an intent to deceive is not required. *Id.* Rather, knowledge of the falsity of a representation is sufficient. *Id.*

The petitioner acknowledges in his July 15, 2011 declaration that he entered into a sham marriage with [REDACTED] in 1998. His admission is sufficient to demonstrate that he sought to procure U.S. lawful permanent residence status through fraud. Accordingly, he is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 has met the statutory eligibility requirements for U nonimmigrant classification, he is inadmissible under section 212(a)(6)(C)(i) of the Act and his application to waive his ground 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.