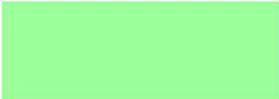




U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JAN 07 2013** Office: VERMONT SERVICE CENTER

FILE: 

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. § 1101(a)(15)(U)

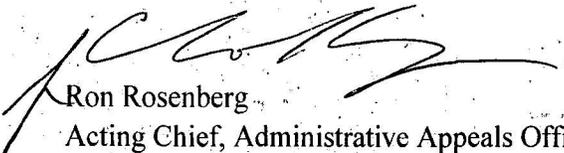
ON BEHALF OF PETITIONER:

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 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director of the 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 and 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:

(6) Illegal Entrants and Immigration Violators

(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.

* * *

(7) Documentation Requirements

* * *

(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.

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.

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in 1992 without being inspected, admitted or paroled by an immigration officer. The petitioner filed the instant Form I-918 U petition and a Form I-192 waiver application on November 14, 2011. The director subsequently issued a Notice of Intent to Deny (NOID) the Form I-192, informing the petitioner, in part, that he was inadmissible under sections 212(a)(6)(A)(i) and (a)(7)(B)(i) of the Act. When responding to the NOID, the petitioner did not submit a copy of a valid passport or explain why he did not possess one. The director ultimately denied the Form I-192 on August 1, 2012, as well as the petitioner's Form I-918 U petition. Although the director determined that the petitioner was statutorily eligible for U nonimmigrant status, he denied the Form I-918 U petition because the petitioner's Form I-192 had been denied.

Subsequent to the denial of the petition, the petitioner filed a second Form I-192¹ as well as an appeal of the denial of the Form I-918 U petition. On October 4, 2012, the director denied the second Form I-192.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). There is no appeal of a decision to deny a Form I-192. 8 C.F.R. § 212.17(b)(3). Because the AAO does not have jurisdiction to review whether the director properly denied the Form I-192, the AAO cannot consider whether approval of the waiver application should have been granted. The AAO may only review 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). Upon review of the record, we concur with the director's decision to deny the petition.

On the Form I-918 U petition, the petitioner claims to have entered the United States in 1992 at or near San Ysidro, California without being inspected, admitted or paroled by an immigration officer. The petitioner is, therefore, inadmissible to the United States under section 212(a)(6)(A)(i) of the Act.

For petitioners seeking U nonimmigrant status, section 212(a)(7)(B)(i)(I) of the Act requires them to possess a passport that is valid for a minimum of six months from the date of the expiration of their initial period of admission as a U nonimmigrant. Although the petitioner has been provided with ample opportunity to submit a copy of a valid passport, both in response to the NOID and on appeal, he has failed to establish that he is in possession of a valid passport. Consequently, the petitioner is also inadmissible under section 212(a)(7)(B)(i) of the Act.

¹ Receipt number [REDACTED]

Conclusion

The petitioner has not demonstrated his admissibility to the United States because he entered the United States without being inspected, admitted or paroled by an immigration officer, and he is not in possession of a valid Mexican passport. Accordingly, the director's decision to deny the Form I-198 U petition based upon the denial of the petitioner's waiver applications shall not be disturbed.

In these proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. 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.

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