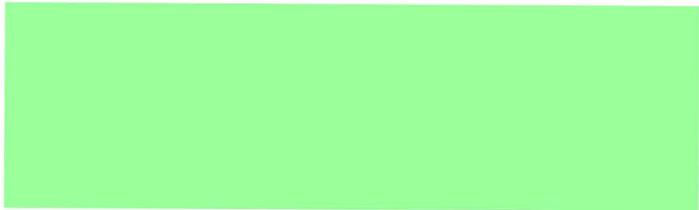


(b)(6)

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

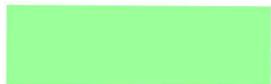


U.S. Citizenship
and Immigration
Services

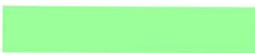


Date: Office: VERMONT SERVICE CENTER FILE:

JUL 10 2013



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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the 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 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 alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. Section 212(d)(14) of the Act 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 Form I-918 because although the petitioner met the criteria for U-1 nonimmigrant status at section 101(a)(15)(U)(i)(I) of the Act, the petitioner was inadmissible to the United States and his request for a waiver of inadmissibility (Form I-192, Application for Advance Permission to Enter as Nonimmigrant) had been denied.¹

On appeal, counsel does not contest the petitioner's inadmissibility, but claims the director improperly found that he did not merit a waiver of inadmissibility, and that the director should not consider the grounds of inadmissibility that were waived by the Department of Justice under separate proceedings.

Analysis

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. 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 cannot address counsel's claims regarding why the petitioner's waiver request 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).

¹ The petitioner's second Form I-192, received on June 20, 2012, Rec. Num. EAC 12 188 50057, was also denied.

The Petitioner's Inadmissibility

A full review of the record supports the director's determination that the petitioner is inadmissible under subsections 212(a)(2)(A)(i)(I), (a)(2)(A)(i)(II), (a)(2)(B), (a)(2)(C), and (a)(7)(B)(i)(I) of the Act.

The petitioner admits that he was convicted of:

- carrying a concealed weapon in a vehicle in 1985, for which he was sentenced to 36 months of probation and 180 days in prison;
- two counts of assault with a firearm in 1985, for which he was sentenced to 36 months of probation, 365 days in prison, and 3 years imprisonment for violation of probation;
- felon in possession of a firearm in 1991, for which he was sentenced to 24 months of probation and 365 days in prison;
- transportation for sale of cocaine base in 1993, for which he was sentenced to 5 years imprisonment; and
- felon in possession of a firearm in 2008, for which he was sentenced to 4 years imprisonment.

The petitioner's conviction for assault with a firearm qualifies as a conviction for a crime involving moral turpitude (CIMT). It has long been recognized that assault with a deadly weapon is a crime involving moral turpitude. *See Matter of Medina*, 15 I&N Dec. 611 (BIA 1976). Accordingly, the petitioner is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for being convicted of a crime involving moral turpitude.

The petitioner's conviction for transportation for sale of cocaine base renders the petitioner inadmissible under subsections 212(a)(2)(A)(i)(II) of the Act for having been convicted of violating a law relating to a controlled substance, and 212(a)(2)(C) of the Act for reason to believe the petitioner is a controlled substance trafficker.

The petitioner's multiple convictions render the petitioner inadmissible under subsection 212(a)(2)(B) of the Act as someone who has been convicted of two or more offenses for which the aggregate sentences to confinement were 5 years or more.

The petitioner also has not submitted evidence that he has a valid passport, nor does he dispute his lack of a valid passport. As such, the petitioner is inadmissible under subsection 212(a)(7)(B)(i)(I) of the Act as well.

Counsel does not contest the petitioner's inadmissibility on appeal and submits no evidence or legal analysis to overcome the director's inadmissibility determination. Counsel contends that the director should not consider the petitioner's convictions that were waived by the Department of Justice in relation to an application for a 212(c) waiver, but offers no legal argument to support this assertion.

The Department of Justice's granting of a 212(c) waiver has no bearing on these separate proceedings, and 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 for USCIS to waive any ground of inadmissibility. The director correctly found that the petitioner is inadmissible under subsections 212(a)(2)(A)(i)(I), (a)(2)(A)(i)(II), (a)(2)(B), (a)(2)(C), and (a)(7)(B)(i)(I) of the Act, and denied the petitioner's application for a waiver of inadmissibility. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3).

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); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not established that he is admissible to the United States or that his grounds of inadmissibility have been waived. 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)(i).

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