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

(b)(6)

U.S. Citizenship and Immigration Services

Date: JUN 0 3 2013 Office: VERMONT SERVICE CENTER FILE:

IN RE: PETITIONER:

APPLICATION: 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, 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 The director's decision will be withdrawn in part; however, the appeal will be dismissed and the petition will remain denied.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.

The director denied the Petition for U Nonimmigrant Status (Form I-918 U petition) 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 Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) was denied. On appeal, counsel submits a brief and additional evidence.

Applicable Law

Section 101(a)(15)(U) 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.

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 permission 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 Attorney General, is inadmissible.

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(7) Documentation requirements.-

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(B) Nonimmigrants.-

(i) In general.-Any nonimmigrant who-

(I) Not in possession of a passport valid for a minimum of six months from the date of expiration . . .

Section 212(a)(2) of the Act pertains to criminal and related grounds of inadmissibility and states, in pertinent part:

> (B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years of more is inadmissible.

Factual and Procedural History

The petitioner is a native and citizen of El Salvador who filed the Form I-918 U petition on January 20, 2011 and an accompanying Form I-192. The director issued a Request for Evidence (RFE) on July 13, 2011 asking the petitioner to submit dispositions of his various arrests. The petitioner, through counsel, responded to the RFE. On September 6, 2012, the director denied the Form I-918 U petition and the Form I-192. 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. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition. On appeal, counsel disputes three of the four inadmissibility grounds cited by the director, and for the ground of inadmissibility that does apply, counsel contends that the petitioner merits a favorable exercise of discretion.

The Petitioner's 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 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 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, the AAO does not consider whether approval of the Form I-192 should have been granted. The only issue before the AAO is whether the director was correct in finding the petitioner inadmissible to the United States and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

In the September 6, 2012 denial decision, the director did not find the petitioner ineligible for U nonimmigrant status for any reason other than his inadmissibility. The director determined that the petitioner was inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole), 212(a)(7)(B)(i)(I) (not in possession of a valid passport), and 212(a)(2)(B) (multiple offenses, five year sentence) of the Act.[1]

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[1] The director also stated in the Form I-192 denial decision that the petitioner "may be inadmissible under section 212(a)(1)(A)(iii)(I) [of the Act]" based upon his psychological evaluation, but declined to discuss this ground of

The director found that based on the petitioner's numerous convictions, and in particular his June 26, 2008 conviction for violating Revised Code of Washington (RCW) §§ 11.56.020 (driving under the influence of intoxicants/drugs) and 11.58.005 (negligent driving), he was inadmissible under section 212(a)(2)(B) of the Act. However, the evidence in the record does not establish that the petitioner was sentenced to five years or more in confinement. Therefore, he is not inadmissible under section 212(a)(2)(B) of the Act. In addition, the petitioner is no longer inadmissible under section 212(a)(7)(B)(i)(I) of the Act because on appeal he provided a copy of a valid passport. This portion of the director's decision will be withdrawn.

The director also found the petitioner inadmissible under section 212(a)(6)(A)(i) of the Act, as an alien present without admission or parole. A full review of the record supports the director's determination that the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act for being present without admission or parole. The record indicates that the petitioner claims to have entered the United States in March 1989 without inspection. On appeal, counsel does not contest the petitioner's inadmissibility but instead focuses her assertions on why the director should have favorably exercised his discretion.

The director denied the petitioner's application for a waiver of inadmissibility and 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). Although the petitioner has met the statutory eligibility requirements for U nonimmigrant classification, he has not established that he is admissible to the United States based upon being present in the United States without admission or parole or that his ground of inadmissibility has 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.

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inadmissibility further. As the director did not make a finding of inadmissibility under section 212(a)(1)(A)(iii)(I) of the Act, we shall not discuss the ground of inadmissibility in our decision.