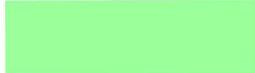


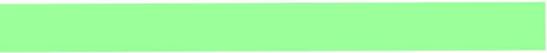


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUN 12 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 our 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 request 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 that any motion must 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 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 The director's decision will be withdrawn in part and affirmed in part. 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

U nonimmigrant classification may be granted to an alien who demonstrates that he or she has, in pertinent part, "suffered substantial physical or mental abuse as a result of having been a victim of [qualifying] criminal activity" and "has been helpful . . . to a Federal, State, or local law enforcement official . . . investigating or prosecuting [qualifying] criminal activity." Section 101(a)(15)(U)(i)(I), (III) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i)(I), (III).

Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), states:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

Pursuant to the regulations, the petitioner also must show that "since the initiation of cooperation, [she] has not refused or failed to provide information and assistance reasonably requested." 8 C.F.R. § 214.14(b)(3). This regulatory provision "exclude[s] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested." *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). If the petitioner "only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered." *Id.*

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. 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."

Factual and Procedural History

The petitioner is a native and citizen of Mexico who claims to have last entered the United States in 1998 without inspection, admission or parole. On June 21, 2011, the petitioner filed a Form I-918 U petition along with a *U Nonimmigrant Status Certification* (Form I-918 Supplement B). The director subsequently issued a Request for Evidence (RFE) to obtain evidence regarding the petitioner's admissibility to the United States. In response, the petitioner submitted additional evidence. The director subsequently denied the petition, in part, because the petitioner failed to provide assistance to an investigation or prosecution of an assault that occurred in 2009. The director also denied the petition because 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.

On appeal, counsel submits a brief in which she asserts that the director abused his discretion by denying the Form I-918 based on a letter from [REDACTED] that the petitioner did not submit and has not had an opportunity to review, particularly because the letter referred to an assault that was not the subject of the Form I-918 Supplement B. Counsel also contends that it was an abuse of discretion for the director to refuse to consider evidence of the petitioner's rehabilitation and to apply the standard established under *Matter of Hranka*, 16 I&N Dec. 491 (BIA 1978). Counsel does not dispute the petitioner's inadmissibility to the United States.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we withdraw the director's determination that the petitioner was not helpful to law enforcement authorities, but affirm his finding that the petitioner is inadmissible to the United States and has not been granted a waiver of inadmissibility.

Helpfulness to Law Enforcement

The record contains a law enforcement certification signed by the [REDACTED] (certifying official) of the [REDACTED] dated January 25, 2011. The Form I-918 Supplement B relates to an incident that occurred on October 31, 2010. The certifying official indicated at Part 4 that the petitioner was helpful in the investigation of the qualifying criminal activity, had not been required to provide further assistance, and had not unreasonably refused to assist law

enforcement authorities in the investigation or prosecution of criminal activity.

In his denial decision, the director stated that in a letter dated February 25, 2010, [REDACTED] indicated that the petitioner had not been helpful to the sheriff's office regarding an assault that occurred in 2009, and that the case was closed. On appeal, counsel contends that the certifying official certified the petitioner's helpfulness to law enforcement authorities for a separate incident that occurred in 2010, and the director cannot use the petitioner's lack of helpfulness in a previous incident to deny his current Form I-918 petition. Counsel also submits an email from [REDACTED] of the [REDACTED] reaffirming the petitioner's helpfulness in the investigation of the 2010 assault incident.

The director's finding that the petitioner did not provide ongoing assistance in the investigation or prosecution of his assault is not supported by the record. The regulation at 8 C.F.R. § 214.14(b)(3) requires the petitioner to show that "since the initiation of cooperation, [he] has not refused or failed to provide information and assistance reasonably requested." Here, the certifying official provided no indication at Part 4 of the Form I-918 Supplement B that the petitioner was unhelpful to law enforcement authorities in the investigation or prosecution of the 2010 assault; that he was requested to provide additional information, but did not; or that he unreasonably refused to assist the police regarding the 2010 assault. To the contrary, the certifying official's willingness to submit a Form I-918 Supplement B, dated January 25, 2011, after he submitted the 2010 letter noting the petitioner was not helpful in the investigation of the 2009 assault is evidence that the certifying agency did not believe that the petitioner had refused or failed to provide reasonable assistance since the initiation of his cooperation in the investigation of the 2010 assault. Furthermore, in an email submitted on appeal from [REDACTED] another official from the [REDACTED] has reasserted the petitioner's helpfulness in the investigation of the 2010 assault. Accordingly, we withdraw the director's finding that the petitioner was not helpful in the investigation or prosecution of qualifying criminal activity.

The Petitioner's Inadmissibility

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).

The record shows that the petitioner was convicted of more than one charge of marijuana and drug paraphernalia possession. The petitioner is consequently inadmissible under subsection 212(a)(2)(A)(i)(II) of the Act for having been convicted of violating a law relating to a controlled substance. The record shows and the petitioner admits that he entered the United States without admission, inspection or parole. He is consequently inadmissible under subsection 212(a)(6)(A)(i)

of the Act. The petitioner has not submitted proof that he has a valid passport, and as such, he is inadmissible under 212(a)(7)(B)(i)(II).¹

A full review of the record supports the director's determination that the petitioner is inadmissible under subsections 212(a)(2)(A)(i)(II), (a)(6)(A)(i), and (a)(7)(B)(i)(II) of the Act. Counsel does not contest the petitioner's inadmissibility on appeal and submits no evidence or legal analysis to overcome the director's inadmissibility determination.

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 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.

¹ The petitioner may also be inadmissible for having been convicted of a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act for his 2009 conviction for violation of a protective order, but the petitioner has not provided the certified record of conviction necessary for such a determination.