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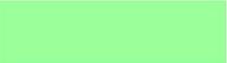
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

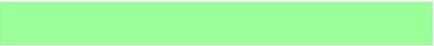


U.S. Citizenship
and Immigration
Services



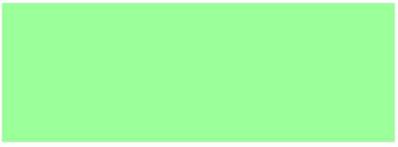
DATE: **MAR 28 2013** Office: VERMONT SERVICE CENTER

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:



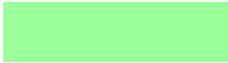
INSTRUCTIONS:

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 U nonimmigrant visa petition (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), 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 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.

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

(2)(A) Conviction of certain crimes.

(i) In general. Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . .

(II) a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance . . .

* * *

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.

Factual and Procedural History

The petitioner is a native and citizen of Mexico who claims to have last entered the United States in 1999 without being inspected, admitted or paroled by an immigration officer. The petitioner filed the instant Form I-918 U petition and the Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on March 13, 2012. The director issued a Request for Evidence (RFE) on April 13, 2012 and the petitioner, through counsel, responded to the RFE. On September 14, 2012, the director denied the Form I-918 petition and the Form I-192 application. In his decision on the Form I-918 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 timely appealed that denial.

On appeal, counsel submits a brief and additional evidence. Counsel does not appear to dispute the director's determination that the petitioner is inadmissible to the United States. Instead, counsel asserts that the director erred in finding that the petitioner was in a gang, ignored the evidence of his good character, and should not consider the petitioner's detention by U.S. Immigration and Customs Enforcement (ICE) a negative factor.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 does not consider whether approval of the Form I-192 application 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 application pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

The director found the petitioner inadmissible under: section 212(a)(2)(A)(i)(II) of the Act, as an alien who has been convicted of a crime relating to a controlled substance and section 212(a)(6)(A)(i) of the Act, as an alien present without admission or parole. On appeal, counsel does not dispute the petitioner's inadmissibility but instead focuses assertions on why the director should have favorably exercised his discretion and approved the Form I-192.

The record shows that the petitioner is inadmissible to the United States on each of the grounds cited to by the director. The petitioner does not deny that he last entered the United States without being inspected, admitted or paroled by an immigration officer. Therefore, he is inadmissible under section 212(a)(6)(A)(i) of the Act. On July 19, 2011, the petitioner was convicted of possession of less than one ounce of marijuana in the Las Vegas Municipal Court. The petitioner was sentenced to 3 days imprisonment. Thus, the petitioner is also inadmissible

under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of violating a controlled substance law.¹ The petitioner therefore cannot be granted U nonimmigrant status because he is inadmissible under sections 212(a)(2) and (6) of the Act and his Form I-192 has been denied.

On appeal, counsel also contends that USCIS can grant the Form I-918 even if the petitioner is inadmissible so he can simply consular process. However, the regulation at 8 C.F.R. § 214.14(c)(iv) clearly states that an individual applying for U nonimmigrant status must file a Form I-192, *Application for Advance Permission to Enter as a Non-Immigrant*, in order to qualify for U nonimmigrant status. See also 8 C.F.R. § 212.17.²

Conclusion

As always in these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4). The petitioner has met the requirements of section 101(a)(15)(U)(i) of the Act, but has failed to establish his admissibility, as required for U nonimmigrant classification pursuant to section 212(d)(14) of the Act and the regulations at 8 C.F.R §§ 212.17, 214.1(a)(3)(i), 214.14(c)(2)(iv). 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).

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

¹ Although the petitioner was convicted of a simple controlled substance possession violation that would normally be waived under section 212(h) of the Act, section 212(d)(14) of the Act and the regulation at 8 C.F.R. § 212.17 require that all grounds of inadmissibility must be waived by USCIS through the grant of a Form I-192 before a Form I-918 may be approved.

² On appeal, counsel also states that if the AAO takes the position that it has no jurisdiction to review an appeal of the denial of a Form I-192, the appeal should be remanded to the director for consideration as a motion to reconsider. Only late filed appeals that meet the requirements of a motion may be treated as motions. 8 C.F.R. § 103.3(a)(2)(v)(B)(2). Here, the appeal was not filed late.