



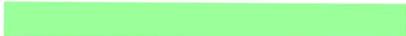
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 09 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)(i) of the Immigration and Nationality Act, 8 U.S.C. § 101(a)(15)(U)(i)

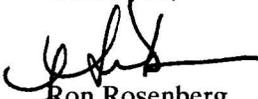
ON BEHALF OF PETITIONER:



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.

Thank you,



Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (“the director”), revoked approval of the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed the petitioner’s appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The prior decision of the AAO will be withdrawn, but the petition will be remanded to the director for further action because the petitioner remains ineligible for U nonimmigrant status.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(U)(i), 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 aliens who have suffered substantial abuse as the victim of qualifying criminal activity and who assist government officials in investigating or prosecuting such criminal activity. All nonimmigrants, including U 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). 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, Petition for U Nonimmigrant Status, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. 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 for Advance Permission to Enter as Nonimmigrant, in conjunction with a Form I-918 U petition in order to waive any ground(s) of inadmissibility. There is no appeal of a decision to deny a waiver. 8 C.F.R. § 212.17(b)(3).

Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

(6) (C) Misrepresentation

(i) In General

Any alien, who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

...

(9) Aliens Previously Removed

(A) Certain Aliens Previously Removed

...

(ii) Other Aliens

Any alien not described in clause (i) who –

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal . . . is inadmissible.

(B) Aliens Unlawfully Present

(i) In General

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The AAO conducts appellate review on a de novo basis. 8 C.F.R. § 214.14(c)(4). *See also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4).

Factual and Procedural History

The petitioner is a native and citizen of Mexico who entered the United States as a nonimmigrant visitor in 1990 and remained in the United States beyond his period of authorized stay. On August 13, 1998, the petitioner was granted conditional permanent resident status based on his marriage to a U.S. citizen. The petitioner's marriage was subsequently annulled in 2001 and he was placed in removal proceedings in July 2009. The petitioner filed the instant Form I-918 on September 14, 2009. On February 12, 2010, the director approved the petitioner's Form I-918 and his Form I-192. Because USCIS records showed that the petitioner remained a lawful permanent resident and ineligible for nonimmigrant status, the director subsequently revoked approval of the Form I-918 petition on February 18, 2011 after providing proper notice to the petitioner. The director also revoked approval of the petitioner's Form I-192 waiver application. On February 6, 2012, the Atlanta Field Office administratively terminated the petitioner's conditional permanent resident status under section 216(c) of the Act, 8 U.S.C. § 1186a(c).

In its July 6, 2012 decision on appeal of the director's denial of the Form I-918 U petition, the AAO determined that the petitioner was ineligible for U nonimmigrant status because he remained a U.S. lawful permanent resident. The AAO explained that although his conditional residency had been administratively terminated and his removal proceedings had been administratively closed, the petitioner was not the subject of a final order of removal, nor had his permanent residency been lost through abandonment, rescission or relinquishment. Counsel timely filed a motion to reopen and reconsider. The motion shall be granted. For the reasons discussed below, the prior decision of the AAO shall be withdrawn and the matter shall be remanded to the director for further action.

Analysis

While these proceedings were pending, intervening events have affected the petitioner's eligibility for U nonimmigrant status. On March 21, 2013, an immigration judge of the [REDACTED] Immigration Court ordered the petitioner deported from the United States under section 237(a)(1)(D)(i) of the Act, 8 U.S.C. § 1227(a)(1)(D)(i), as a conditional permanent resident whose status was terminated. No appeal was filed from the immigration judge's decision. The petitioner is now the subject of a final administrative order of deportation and has lost his permanent resident status. Consequently, the AAO's prior decision must be withdrawn.

Approval of the Form I-918 petition may not be reinstated, however, because the petitioner remains inadmissible to the United States. As the petitioner has now been ordered removed from the United States, he is inadmissible under section 212(a)(9)(A)(ii) of the Act.¹ The petitioner is also inadmissible for his prior unlawful presence under section 212(a)(9)(B)(i) of the Act. USCIS records show that after he remained in the United States beyond his period of authorized stay in 1990, he subsequently departed and reentered the United States multiple times between 2002 and 2008. Accordingly, the petitioner accrued unlawful presence from at least April 1, 1997 until his adjustment to conditional residency in 1998.

In addition, the petitioner is inadmissible under section 212(a)(6)(C)(i) of the Act for fraudulently obtaining lawful permanent residency. The record contains a sworn statement executed by the petitioner on October 28, 2002 before the legacy Immigration and Naturalization Service in which he stated that he entered into marriage with his former wife for the purpose of remaining in the United States. The petitioner admitted that the marriage was fraudulent and estimated that he gave approximately \$70,000 to his former wife in gifts and cash so that she would not withdraw his immigration application. In these proceedings, the petitioner furthered his misrepresentation under section 212(a)(6)(C)(i) of the Act by answering "No" to Question 16, Part 3 of the Form I-918 which asks: "Have you ever, by fraud or willful misrepresentation of a material fact, sought to procure, or procured, a visa or other documentation, for entry into the United States or any immigration benefit?"

The petitioner is ineligible for U nonimmigrant status due to his inadmissibility unless he obtains a waiver through the approval of a Form I-192 application. The director revoked approval of the

¹ The record further shows that while these proceedings were pending, the petitioner was convicted of alien smuggling in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(II) and (a)(1)(B)(ii). The court sentenced the petitioner to 37 months of imprisonment followed by 60 months of probation. *United States v. Tueme-Resendez*, Judgment, [REDACTED]. The petitioner's offense does not render him inadmissible as a smuggler under section 212(a)(6)(E)(i) of the Act, however, because he was convicted of aiding and abetting the transportation of undocumented aliens within the United States. He was not convicted of facilitating their entry or attempted entry into the United States. Nonetheless, the petitioner's conviction may be considered by the director in any subsequent discretionary determination under section 212(d)(14) of the Act.

petitioner's Form I-192 in February 2011 based on the revocation of approval of the Form I-918 petition.

The director's February 18, 2011 decision revoking approval of the Form I-918 petition was based solely on the petitioner's former permanent resident status. The sole ground for revocation has now been overcome, but the petitioner remains ineligible for U nonimmigrant classification due to his inadmissibility. Consequently, the matter must be remanded to the director for issuance of a new decision.

Conclusion

The prior decision of the AAO is withdrawn, but approval of the Form I-918 may not be reinstated. The petitioner remains inadmissible to the United States under subsections 212(a)(6)(C)(i), 212(a)(9)(A)(ii) and 212(a)(9)(B)(i) of the Act. The petitioner's inadmissibility renders him ineligible for U nonimmigrant status 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). The director revoked approval of the petitioner's Form I-192 waiver application, but did not address the petitioner's inadmissibility in his February 18, 2011 decision revoking approval of the Form I-918 U petition. Consequently, the matter must be remanded to the director for issuance of a new decision on the Form I-918 petition. As always in these proceedings, the petitioner bears the burden of proof to establish his eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4).

ORDER: The motion is granted. The July 6, 2012 decision of the Administrative Appeals Office is withdrawn. The matter is remanded to the Vermont Service Center for entry of a new decision in accordance with the foregoing discussion.