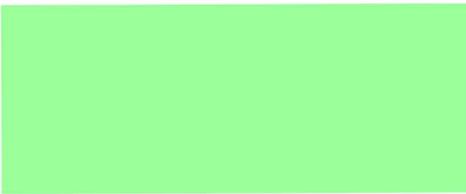


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

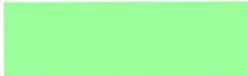


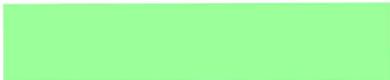
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAY 20 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)

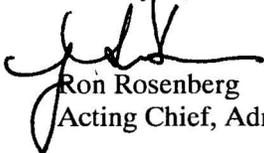
ON BEHALF OF PETITIONER:



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.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the Petition for U Nonimmigrant Status (Form I-918 U petition) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

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.

The director denied the petition because although the petitioner met the eligibility criteria for U nonimmigrant status, he did not establish that he was admissible to the United States or that he had an approved waiver for his inadmissibility. On appeal, counsel submits a brief and additional evidence.

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 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 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 Admission 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:

(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-

* * *

(I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

* * *

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

* * *

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The AAO conducts appellate review on a de novo basis. *See 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, including the Form I-918 Supplement B, U Nonimmigrant Status Certification. 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).

Facts and Procedural History

The petitioner is a native and citizen of Mali who claimed to have last entered the United States on February 26, 2000, as a nonimmigrant visitor. On November 24, 2010, the petitioner filed the instant Form I-918 U petition along with a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. On April 4, 2011, the director issued a Request for Evidence (RFE) of the petitioner's admissibility and the records of conviction for the petitioner's 2005 arrest for record piracy. The petitioner responded with additional evidence, but did not include the records of conviction for the petitioner's 2005 arrest. As the petitioner failed to provide the requested information, the director found that the Form I-192 application had been abandoned. Accordingly, the director denied the Form I-918 petition and the petitioner's Form I-192 application. The petitioner filed a timely appeal of the denial of the Form I-918 U petition.

Analysis

The director found that the petitioner met all the requirements for U nonimmigrant status except admissibility, so that is the only issue that will be addressed in this decision. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in order to waive a ground of inadmissibility.

Although the director was correct that the petitioner failed to establish his admissibility given his failure to provide the record of conviction for his 2005 arrest below, on appeal, counsel has submitted said record of conviction and the record below shows that such record had been requested after issuance of the RFE but was not received until January 2012. The record of conviction reflects that on or about May 11, 2005, the petitioner was convicted of record piracy under Ohio Penal Code § 1333.52(A)(i). Even if a conviction for record piracy qualifies as a crime involving moral turpitude, the maximum penalty for this conviction does not exceed imprisonment for one year, and the petitioner was not sentenced to a term of imprisonment in excess of 6 months.¹ As such, the conviction falls under the “petty offense” exception at section 212(a)(2)(A)(ii)(II) of the Act, and does not render him inadmissible to the United States. However, while the petitioner claims to have entered the United States as a nonimmigrant visitor, and though the director never asked for evidence that he was admitted as a nonimmigrant tourist,² without evidence of his legal entry, the petitioner is considered to have entered without inspection, admission, or parole, and is therefore inadmissible under section 212(a)(6)(A)(i) of the Act.

Here, the director denied the petitioner’s Form I-192 solely on the basis of abandonment, but the petitioner has provided the evidence requested on appeal. 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). However, as the sole ground for denial of the petitioner’s Form I-192 has been overcome on appeal, but he is subject to a ground of inadmissibility not cited by the director, we will return the matter to the director for reconsideration of the Form I-192.

Conclusion

On appeal, the petitioner has overcome the director’s ground for denial of the Form I-192; however the petitioner appears inadmissible under section 212(a)(6)(A)(i) of the Act because he has not established that he was admitted as a nonimmigrant tourist as claimed on his Form I-918. The matter will therefore be remanded for the director to request evidence of the petitioner’s alleged nonimmigrant entry in 2000.

ORDER: The December 7, 2011 decision of the Vermont Service Center is withdrawn and the matter is returned to the director for reconsideration of the petitioner’s Form I-192 and issuance of a new decision on his Form I-918 petition, which if adverse to the petitioner shall be certified to the Administrative Appeals Office for review.

¹ The petitioner was fined \$100 and instructed to forfeit products that were pirated or any of the proceeds from the sales.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003).