



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **NOV 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal, and the matter is again before the AAO on motion to reopen and reconsider. The motion to reconsider will be granted. The appeal will remain dismissed and the underlying 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 Form I-918, 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, he 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. The AAO dismissed the petitioner's appeal because he did not identify specifically any erroneous conclusion of law or statement of fact for the appeal. The petitioner, through counsel, timely filed the instant motion with the AAO.

On motion, counsel claims that the AAO erred in summarily dismissing the petitioner's appeal because the Vermont Service Center failed to forward her timely submitted appeal brief to the AAO. Counsel's submission meets the requirements for a motion to reconsider, but not a motion to reopen because she failed to state any new facts to be proven as required. *See* 8 C.F.R. § 103.5(a)(2)-(3). In her brief on appeal, counsel asserts that the petitioner's Form I-192 was improperly denied by U.S. Citizenship and Immigration Services (USCIS) and the petitioner is not inadmissible.

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 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:

(2) Criminal and Related Grounds

(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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

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

* * *

is inadmissible.

* * *

(C) Controlled Substance Traffickers.-Any alien who the consular officer or the Attorney General knows or has reason to believe –

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical . . . or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so . . .

* * *

(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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(9) Aliens Previously Removed

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(C) Aliens Unlawfully Present After Previous Immigration Violations

(i) In General.-Any alien who –

* * *

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

Facts and Procedural History

The petitioner is a native and citizen of El Salvador who initially entered the United States in 1975 without admission, inspection or parole. On November 6, 1990, the petitioner was granted lawful permanent

resident status in the United States. On June 9, 1992, an immigration judge ordered the petitioner removed from the United States as a result of his August 21, 1991 conviction for the aggravated felony offense of sale or transportation of marijuana. The record indicates that on or about October 7, 1992, the petitioner was removed from the United States and reentered in 1994 without admission, inspection or parole. On March 24, 1997, an immigration judge ordered the petitioner removed from the United States. On May 8, 2000, the petitioner was removed from the United States. In December 2000, the petitioner reentered the United States without admission, inspection or parole. On July 12, 2005, an immigration judge ordered the petitioner removed from the United States. On September 14, 2005, the petitioner was removed from the United States. On October 14, 2005, the petitioner reentered the United States without admission, inspection or parole. On April 1, 2009, the petitioner was removed from the United States. He reentered in July 2010. On April 15, 2011, an immigration judge ordered the petitioner removed from the United States.

Analysis

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). 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 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 only issue before the AAO is whether the director was correct in finding the petitioner inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

A full review of the record supports the director's determination that the petitioner is inadmissible under subsections 212(a)(2)(A)(i)(I) (conviction of crimes involving moral turpitude), (a)(2)(A)(i)(II) (controlled substance violations), (a)(2)(C) (controlled substance trafficker), (a)(6)(A)(i) (present without admission or parole), and (a)(9)(C)(i)(II) (aliens unlawfully present after previous immigration violations) of the Act.

The record shows that the petitioner was convicted of:

- tampering with a vehicle in violation of section 10852 of the California Vehicle Code (CVC) by the Superior Court of California, County of Los Angeles, in 1983, for which he was sentenced to 24 months of probation;
- sell/furnish marijuana/hash in violation of section 11360(A) of the California Health and Safety Code (H&S) by the Superior Court of California, County of Los Angeles, on August 21, 1991, for which he was sentenced to 60 days incarceration and 26 months of probation, and then 180 days incarceration in 1992, 34 days incarceration in 1994, and two years imprisonment upon violation of his probation;

- grand theft in violation of section 487(C) of the California Penal Code (CPC)¹ by the Superior Court of California, County of Los Angeles, on April 1, 2004, for which he was sentenced to two years incarceration and 36 months of probation;
- taking a vehicle without the owner's consent in violation of CVC § 10851(A) by the Superior Court of California, County of Los Angeles, on July 16, 2007, for which he was sentenced to 16 months imprisonment; and
- possession of a controlled substance in violation of H&S § 11377(A) by the Superior Court of California, County of Los Angeles, on March 13, 2009, for which he was sentenced to 222 days incarceration and 36 months of probation, and then 16 months imprisonment upon violation of his probation.

The petitioner's conviction for grand theft is a conviction for a crime involving moral turpitude. *See Rashtabadi v. INS*, 23 F.3d 1562, 1568 (9th Cir. 1994) (grand theft in violation of section 487 of the California Penal Code is a crime involving moral turpitude); *Matter of Chen*, 10 I&N Dec. 671 (BIA 1964) (grand theft is a crime involving moral turpitude). Accordingly, the petitioner is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for being convicted of a crime involving moral turpitude.

Based on the petitioner's criminal conviction for possession of a controlled substance, he is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act as a controlled substance violator. In addition, the petitioner's conviction for selling marijuana renders him inadmissible under section 212(a)(2)(C) of the Act as an alien who the Attorney General has reason to believe is a controlled substance trafficker.

The petitioner does not dispute that he is present in the United States without admission or parole or that he is unlawfully present after previous immigration violations. As noted above, the petitioner has a lengthy immigration history including multiple removals from the United States and reentries without inspection. As such the petitioner is inadmissible under sections 212(a)(6)(A)(i) and 212(a)(9)(C)(i)(II) of the Act.²

Other than disputing the petitioner's false claim to U.S. citizenship, counsel does not contest any other grounds of inadmissibility, but instead focuses her assertions on why the director should have favorably exercised his discretion and approved the petitioner's Form I-192 waiver request.

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 Form I-918 U petition. 8 C.F.R. § 212.17(b)(3).

¹ Under CPC § 487(c) grand theft is committed "when the property is taken from the person of another." Cal. Penal Code Ann. § 487 (West 2013).

² The director also found the petitioner inadmissible under section 212(a)(6)(C)(ii) for falsely claiming U.S. citizenship. However, there is nothing in the record to support an inadmissibility determination on that ground. Therefore, he is not inadmissible under section 212(a)(6)(C)(ii) of the Act, and this portion of the director's decision will be withdrawn.

Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). 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 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 motion is granted. The appeal remains dismissed and the petition remains denied.