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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: **OCT 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) 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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. 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.

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, the petitioner was inadmissible to the United States and her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192), was denied. On appeal, counsel submits a brief and additional evidence.

Applicable Law

Section 101(a)(15)(U) 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:

(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 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.

* * *

(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.

* * *

(9) Documentation requirements.-

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(B) Nonimmigrants.-

- (i) In General.- Any alien (other than an alien lawfully admitted for permanent residence) who-

* * *

- (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.

Factual and Procedural History

The petitioner is a native and citizen of El Salvador who entered the United States in 1995 without inspection or parole. The petitioner filed the Form I-918 U petition and an accompanying Form I-192 on August 27, 2012. The director issued a Request for Evidence (RFE) on December 5, 2012 regarding the Form I-192, noting that the petitioner was inadmissible to the United States. The petitioner, through counsel, responded with additional evidence. On March 22, 2013, the director denied the Form I-918 U petition and the Form I-192. In his decision on the Form I-918 U petition, the director stated that although the petitioner met the criteria for U-1 nonimmigrant status at section 101(a)(15)(U)(i)(I) of the Act, she was inadmissible to the United States and her request for a waiver of inadmissibility had been denied. The director determined that the petitioner was inadmissible under subsections 212(a)(6)(A)(i) (present without admission or parole), 212(a)(2)(A)(i)(II) (controlled substance violations), and 212(a)(9)(B)(i)(II) (unlawful presence) of the Act. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition. On appeal, counsel does not dispute that the petitioner is inadmissible to the United States but claims that the petitioner merits a favorable exercise of discretion.

Analysis

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 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 to the United States and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

The director found the petitioner inadmissible under section 212(a)(9)(B)(i)(II) of the Act as an alien who 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. However, the record does not establish that the petitioner has departed or been removed from the United States. Therefore, she is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. This portion of the director's decision will be withdrawn.

The director also found the petitioner inadmissible under section 212(a)(2)(A)(i)(II) of the Act, for her controlled substance conviction. On April 1, 2009, the petitioner was convicted of possession of marijuana in the [REDACTED] Washington, District Court. Criminal court documents in the record support the director's determination that the petitioner is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violating any law relating to a controlled substance.

In addition, the director found the petitioner inadmissible under section 212(a)(6)(A)(i) of the Act, as an alien present without admission or parole. The petitioner indicated on her Form I-918 U petition that she entered the United States in 1995 without inspection. A full review of the record supports the director's determination that the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act for being present without admission or parole.

Furthermore, the record shows the petitioner has been convicted of burglary and theft, which may render her inadmissible under section 212(a)(2)(A)(i)(I) of the Act.¹

On appeal, counsel does not contest the petitioner's 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).

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, she has not established that she is admissible to the United States or that her grounds of inadmissibility have been

¹ [REDACTED] District Court, State of Washington, Case No. [REDACTED] (theft), and [REDACTED] Superior Court, State of Washington, Case. No. [REDACTED] (burglary).

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waived. She 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.