



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 01 2014** 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,

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 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), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director denied the Form I-918 U petition because the petitioner was inadmissible to the United States and his Form I-192 waiver of inadmissibility had been denied. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, counsel does not contest the petitioner's inadmissibility and instead, submits a brief and additional evidence in support of the petitioner's waiver of inadmissibility.

Applicable Law

Section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i), 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, Petition for U Nonimmigrant Status (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.

(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.

* * *

(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.

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(9) Aliens Previously Removed

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(B) Aliens Unlawfully Present

- (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.

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in May 1998 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition on August 29, 2011, along with an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On April 27, 2012, the director issued a Request for Evidence (RFE) that the petitioner suffered substantial physical or mental abuse as a result of the qualifying criminal activity. The RFE also requested copies of arrest reports for the petitioner's multiple arrests, court dispositions for all arrests, relevant criminal statutes for each criminal charge, and a personal statement and relevant evidence in support of the petitioner's eligibility for the requested waiver. The petitioner responded with additional evidence. However, the director denied the Form I-192 after finding the petitioner's response insufficient to overcome grounds of inadmissibility under sections 212(a)(2)(A)(i)(I) (crimes involving moral turpitude); 212(a)(2)(A)(i)(II) (controlled substance violations); 212(a)(6)(A)(i) (present without admission or parole); 212(a)(6)(C)(i) (misrepresentation/fraud); and 212(a)(9)(B)(i)(II) (unlawful presence) of the Act. The director also denied the petitioner's Form I-918 U petition on the same day.

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 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 we do not have jurisdiction to review whether the director properly denied the Form I-192, we do not consider whether approval of the Form I-192 should have been granted. The only issue before us 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).

A review of the record supports the director’s determination that the petitioner is inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole) of the Act. The petitioner does not dispute that he is present in the United States without admission or parole. As such the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act.

The petitioner has also not satisfied his burden of proof in demonstrating that he is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The petitioner was arrested on April 5, 1993 for theft of services under section 5/16-3(a) of Chapter 720 of the Illinois Compiled Statutes (ILCS) (West 1993), and again, on January 9, 1994 for theft under 720 ILCS § 5/16-1(a) (West 1994).¹ He was again arrested on January 26, 1996 for battery under 720 ILCS § 5/12-3 (West 1996). The petitioner submitted some certified court records for his theft and battery arrests and asserted that these arrests did not result in convictions. However, the petitioner failed to submit the final dispositions of these arrests, certified by the appropriate court authorities.

We note that theft offenses under 720 ILCS §§ 5/16-1(a), 5/16-3(a) may constitute crimes involving moral turpitude if the offenses involved the intent to permanently take another’s property. *See Matter of Grazley*, 14 I&N Dec. 330, 333 (BIA 1973). Similarly, battery under 720 ILCS § 5/12-3 may also constitute a crime involving moral turpitude where the offense involved some aggravating factor indicating the perpetrator’s moral depravity. *See Matter of Ahortalejo-Guzman*, 25 I&N Dec. 465 (BIA 2011); *In re Sanudo*, 23 I. & N. Dec. 968 (BIA 2006). The petitioner has the burden of proof to demonstrate that he is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act. *See* 8 C.F.R. § 214.14(c)(4) (burden of proof on the petitioner to establish eligibility for a U petition). The petitioner has not met this burden, as he failed to submit the final dispositions of his theft and battery arrests. Accordingly, the director’s finding of the petitioner’s inadmissibility under section 212(a)(2)(A)(i)(I) stands. As to the remaining grounds of inadmissibility identified by the director in his decision denying the Form I-192, we withdraw those grounds.

¹ The petitioner was also arrested on October 21, 2005 for Domestic Assault under sections 609.2242.1 and 609.2242.1 of Minnesota Statutes Annotated (MSA) (West 2005) and Terroristic Threats under MSA § 609.713. However, he was ultimately convicted of disorderly conduct under MSA § 609.72.1(3), which does not constitute a crime involving moral turpitude.

The director determined that the petitioner was inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure a benefit under the Immigration and Nationality Act through fraud or willful misrepresentation. The director's decision did not indicate, and the record does not otherwise disclose, the benefit under the Immigration and Nationality Act that the petitioner sought to procure through fraud or willful misrepresentation. Therefore, we withdraw the director's determination of inadmissibility under section 212(a)(6)(C)(i) of the Act.

The director also concluded that the petitioner is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is triggered only when an individual departs the United States after having been unlawfully present in the United States for one year or more and then again seeks admission into the United States. *Matter of Miguel Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012). The evidence of record does not indicate that the petitioner ever departed the United States since his initial entry in 1998. Accordingly, the director's determination of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is also withdrawn.

The record also does not support the director's determination of the petitioner's inadmissibility under section 212(a)(2)(A)(i)(II) of the Act for a controlled substance violation. The petitioner was arrested on October 17, 1995 and charged with possession of cocaine under 720 ILCS 570/402 (West 1995). The petitioner submitted a certified disposition from the criminal court showing that the criminal charge was not prosecuted. As the petitioner was not convicted of, and the record does not show that he otherwise admitted "having committed, or ... committing acts which constitute the essential elements of," a controlled substance violation, the determination of his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act is withdrawn.

Although the director's determinations of the petitioner's inadmissibility under sections 212(a)(2)(A)(i)(II), 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act have been withdrawn, the petitioner remains inadmissible under section 212(a)(6)(A)(i) of the Act for being present in the United States without being paroled or inspected. He has also failed to demonstrate that the inadmissibility ground at section 212(a)(2)(A)(i)(I) of the Act does not apply to him.

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 grounds of inadmissibility have 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 appeal is dismissed. The petition remains denied.