

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

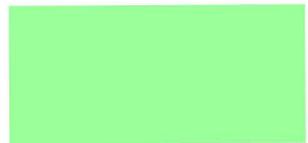
(b)(6)



Date: **AUG 12 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, Petition for U Nonimmigrant Status (Form I-918 U petition), because the petitioner 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.

*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:

(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 –

\* \* \*

(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 . . .

\* \* \*

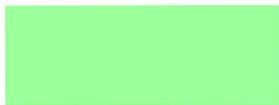
is inadmissible.

\* \* \*

(7) Documentation requirements.-

\* \* \*

(B) Nonimmigrants.-



(i) In general.-Any nonimmigrant who-

(I) Not in possession of a passport valid for a minimum of six months from the date of expiration . . .

\* \* \*

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 (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

\* \* \*

(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.

\* \* \*

(C) Aliens Unlawfully Present After Previous Immigration Violations

(i) In General.-Any alien who -

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(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 Mexico who claims to have initially entered the United States in 1993 without admission, inspection or parole. In 1997, the petitioner departed the United States and returned on an unknown date in 1997 or 1998 without admission, inspection or parole.<sup>1</sup> On July 10, 2008, an immigration judge ordered the petitioner removed from the United States as a result of his entry without inspection and his September 2, 1999 conviction for possession of methamphetamine. On July 16, 2008, the petitioner was removed from the United States. The petitioner reentered the United States on an unknown date in 2008 without admission, inspection or parole.<sup>2</sup> On January 8, 2013, the immigration judge's removal order was reinstated.

The petitioner filed the instant Form I-918 U petition with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on April 1, 2013. On the same day, the petitioner filed a Form I-192. On May 1, 2013, the director issued two Requests for Evidence (RFE) noting that the petitioner was inadmissible to the United States, and requesting an original Form I-918 Supplement B, and the petitioner's fingerprints and photos. Counsel responded to the RFE's with additional evidence and an original Form I-918 Supplement B.

On July 11, 2013, the petitioner was removed from the United States. On December 19, 2013, the director found the petitioner's response insufficient to overcome his grounds of inadmissibility and denied the Form I-192. The director determined that the petitioner was inadmissible under sections 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude), 212(a)(2)(A)(i)(II) (controlled substance violation), 212(a)(6)(A)(i) (present without admission or parole), 212(a)(7)(B)(i)(I) (not in possession of a valid passport), 212(a)(9)(A)(ii) (aliens previously removed), and 212(a)(9)(B)(i)(II) (unlawful presence) of the Act. The director denied the petitioner's Form I-918 U petition on the same day because the petitioner was inadmissible to the United States and his waiver of inadmissibility had been denied. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner, through counsel, does not dispute that the petitioner is inadmissible to the United States but claims that the petitioner is rehabilitated, he has shown good moral character, and it would be in the national and public interest that his grounds of inadmissibility be waived. She notes that the petitioner's family will suffer extreme hardship if his waiver is not granted.

<sup>1</sup> The petitioner provided two different dates of his alleged entry; December 1, 1997 and 1998.

<sup>2</sup> The petitioner provided two different dates of his alleged last entry; July 16, 2008 and October 2008.

*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 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 full review of the record supports the director’s determination that the petitioner is inadmissible under sections 212(a)(7)(B)(i)(I) (not in possession of a valid passport), 212(a)(9)(A)(ii) (aliens previously removed), and 212(a)(9)(B)(i)(II) (unlawful presence) of the Act. The petitioner does not dispute that he was previously removed from the United States or that he was unlawfully present in the United States for one year or more, and he has not submitted evidence that he has a valid passport. 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)(7)(B)(i)(I), 212(a)(9)(A)(ii), and 212(a)(9)(B)(i)(II) of the Act.

The director also found the petitioner inadmissible under section 212(a)(2)(A)(i)(II) of the Act for his controlled substance violation. 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 as a result of his 1999 conviction.

In addition, the director found the petitioner inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. However, as noted above, the petitioner was removed from the United States on July 11, 2013 and there is no evidence that he is present in the United States without being admitted or paroled. Therefore, the petitioner is not inadmissible under section 212(a)(6)(A)(i) of the Act. This portion of the director’s decision will be withdrawn.

Further, the director found the petitioner inadmissible under section 212(a)(2)(A)(i)(I) of the Act for being convicted of a crime involving moral turpitude. However, the evidence in the record does not establish that the petitioner was convicted of a crime involving moral turpitude. Therefore, the petitioner is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act. This portion of the director’s decision will also be withdrawn.

Although in his denial decision, the director only indicated that the petitioner was inadmissible to the United States under sections 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude), 212(a)(2)(A)(i)(II) (controlled substance violation), 212(a)(6)(A)(i) (present without admission or parole), 212(a)(7)(B)(i)(I) (not in possession of a valid passport), 212(a)(9)(A)(ii) (aliens previously removed), and 212(a)(9)(B)(i)(II) (unlawful presence) of the Act, a full review of the record shows that the petitioner is also inadmissible

under sections 212(a)(9)(C)(i)(I) (unlawfully present in the United States for one year or more and reentering the United States without being admitted) and 212(a)(9)(C)(i)(II) (ordered removed from the United States and reentering the United States without being admitted) of the Act.<sup>3</sup>

As noted above, the petitioner initially entered the United States in 1993 without admission, inspection or parole. In 1997, the petitioner departed the United States and returned on an unknown date in 1997 or 1998 without admission, inspection or parole.<sup>4</sup> On July 10, 2008, an immigration judge ordered the petitioner removed from the United States. On July 16, 2008, the petitioner was removed from the United States. The petitioner reentered the United States on an unknown date in 2008 without admission, inspection or parole. On January 8, 2013, the immigration judge's removal order was reinstated. On July 11, 2013, the petitioner was removed from the United States. The petitioner accrued unlawful presence from 1997 or 1998, when he entered the United States, until July 16, 2008, when he was removed from the United States. In addition, he accrued unlawful presence from 2008, when he reentered the United States, until July 11, 2013, when he was again removed from the United States. The petitioner's reentries without admission after his periods of unlawful presence and removal orders triggered the petitioner's inadmissibility under sections 212(a)(9)(C)(i)(I) and 212(a)(9)(C)(i)(II) of the Act. Therefore, the petitioner is inadmissible under sections 212(a)(9)(C)(i)(I) and 212(a)(9)(C)(i)(II) of the Act.

On appeal, counsel does not contest the petitioner's grounds of inadmissibility but instead focuses her assertions on why the director should have favorably exercised his discretion because of the hardships suffered by his family and approved his 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). Here, that burden has not been met. Accordingly, the appeal will be dismissed.<sup>5</sup>

**ORDER:** The appeal is dismissed. The petition remains denied.

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<sup>3</sup> 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 (9<sup>th</sup> Cir. 2003).

<sup>4</sup> The petitioner provided two different dates of his alleged entry; December 1, 1997 and 1998.

<sup>5</sup> The director also noted that the petitioner did not meet the requirements for U nonimmigrant classification. The director did not, however, discuss this issue further because the petition was otherwise deniable. We also do not discuss the petitioner's statutory eligibility for U nonimmigrant status, as he is inadmissible to the United States and his grounds of inadmissibility have not been waived.