



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: DEC 05 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,

Jon 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 her Application for Advance Permission to Enter as a Nonimmigrant (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 on the stated grounds, and instead, submits a brief and additional evidence to demonstrate that the director should favorably exercise discretion and approve the waiver.

*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 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 conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

is inadmissible.

\* \* \*

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

- (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or
- (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).

\* \* \*

(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 as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), 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;
  - ...
 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.

\* \* \*

(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.

*Facts and Procedural History*

The petitioner is a native and citizen of Guatemala who was admitted to the United States as a lawful permanent resident (LPR) on July 2, 1998. A Notice to Appear was issued against the petitioner on May [REDACTED] placing her into removal proceedings based on her Illinois conviction for Delivery of a Controlled Substance, to wit: cocaine, in violation of section 570/401(D) of Chapter 720 of the Illinois Compiled Statutes (ILCS) on December 15, 1999. The petitioner was ordered removed from the United States by an immigration judge on March 10, 2014, and the Board of Immigration Appeals (Board) dismissed the petitioner's appeal on October 6, 2014.

The petitioner filed the instant Form I-918 U petition on September 4, 2013, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). On October 2, 2013, the director issued a Request for Evidence (RFE), requesting, among other things, a copy of the petitioner's valid passport and a Form I-192 waiver. The petitioner responded with additional evidence. The director ultimately denied the Form I-192, finding that the petitioner was inadmissible under sections 212(a)(2)(A)(i)(I) (crimes involving moral turpitude); 212(a)(2)(A)(i)(II) (controlled substance violation); 212(a)(2)(C) (reason to believe - drug trafficker); 212(a)(6)(A)(i) (present without admission or parole); and 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport) of the Act, and that the petitioner had not demonstrated that her application for a waiver of inadmissibility warranted a favorable exercise of discretion. As the petitioner was found inadmissible and her Form I-192 had been denied, the director consequently also denied the petitioner's Form I-918 U petition. The petitioner filed a timely appeal of the denial of her petition.

On appeal, the petitioner does not dispute that she is inadmissible to the United States but asserts that the director's decision denying her Form I-192 waiver application was arbitrary and unfounded. She contends that the evidence of record establishes that she merits a favorable exercise of discretion such that her waiver application and Form I-918 U petition should be granted.

*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).

The director concluded that the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act (present without admission or parole). However, this basis of inadmissibility was previously waived when the petitioner was granted LPR status in conjunction with a waiver application in 1998. The record contains no evidence that the petitioner is currently present in the United States without having been admitted or paroled. Accordingly, the director’s determination of inadmissibility under section 212(a)(6)(A)(i) of the Act is withdrawn.

Although the director’s determination of the petitioner’s inadmissibility under section 212(a)(6)(A)(i) of the Act has been withdrawn, the petitioner does not dispute that she is inadmissible under sections 212(a)(2)(A)(i)(I),(II); 212(a)(2)(C); and 212(a)(7)(B)(i)(I) of the Act.<sup>1</sup> The petitioner asserts that director’s decision should be reversed and that her Form I-192 waiver application be approved in the favorable exercise of discretion; however, 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).

Accordingly, although the petitioner appears to have met the statutory eligibility requirements for U nonimmigrant classification, she has not established that she is admissible to the United States or that the grounds of inadmissibility have been 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).

Beyond the determination of the director, the instant petition is also not approvable because the petitioner was a LPR at the time of filing of the instant petition.<sup>2</sup> Lawful permanent resident status terminates upon entry of a final administrative order of removal. 8 C.F.R. § 1.2 (defining *Lawfully admitted for permanent residence*); 1001.1(p); see also *Etuk v. Slattery*, 936 F.2d 1433, 1447 (2d Cir. 1991) (citing *Matter of Gunaydin*, 18 I&N Dec. 326 (BIA 1982)). Lawful permanent residency does not end upon commission of acts which may render the resident inadmissible or removable, but upon entry of a final administrative order of removability based on such acts. *Matter of Gunaydin*, 18 I&N Dec. at 328.

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<sup>1</sup> In the appellate brief, the petitioner through counsel states, in part, that “[t]he [petitioner’s] criminal conviction is one of a crime involving moral turpitude and is also a controlled substance violation qualifying it as an aggravated felony offense . . . .”

<sup>2</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).

At the time the petitioner filed the instant Form I-918 U petition in September 2013, removal proceedings against the petitioner remained pending and had not yet resulted in a final removal order. The petitioner is required to establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). Consequently, as a lawful permanent resident, the petitioner was ineligible for nonimmigrant U classification at the time she filed her Form I-918 U petition.<sup>3</sup>

*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.

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

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<sup>3</sup> Section 101(a)(15) of the Act defines the term “immigrant” as “every alien except an alien who is within one of the following classes of nonimmigrant aliens.” Section 101(a)(15)(U) of the Act is one such nonimmigrant classification that is not included in the definition of “immigrant” at section 101(a)(15) of the Act. The statute and regulations do not permit a lawful permanent resident to adjust status to that of a U nonimmigrant. The Act allows an alien to change from one nonimmigrant classification to another and permits lawful permanent residents to adjust to A, E and G nonimmigrant classification, but the Act contains no provision for the adjustment of a lawful permanent resident to U nonimmigrant status. *See* Sections 247, 248 of the Act, 8 U.S.C. §§ 1257, 1258.