



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,

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 petition because the petitioner did not submit a properly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), and consequently did not meet any of the eligibility criteria for U nonimmigrant classification. The director further found the petitioner ineligible for U nonimmigrant status because the petitioner was inadmissible to the United States and her Form I-192 waiver of inadmissibility had been denied.

Applicable Law

Section 101(a)(15)(U) of the Act, 8 U.S.C. § 1101(a)(15)(U), provides U nonimmigrant classification to alien victims of certain qualifying criminal activity and their qualifying family members. Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918.[]

* * *

Additionally 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.

The regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS). USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who last entered the United States on May 30, 2012. The record indicates that the petitioner was issued an Order to Show Cause on August 23, 1994, placing her into deportation proceedings, based on her June 24, 1994 conviction for Possession with Intent to Distribute Less Than 50 Kilograms of Marijuana in violation of 21 U.S.C. 841(a)(1), (b)(1)(D) and for Aiding and Abetting in violation of 18 U.S.C. 2 in the United States District Court for the District of New Mexico in [REDACTED] New Mexico. The petitioner was ordered deported *in absentia* from the United States by an immigration judge on November 21, 1994 and was physically deported on January 13, 1995. Thereafter, she was admitted to the United States in June 1999 as a nonimmigrant visitor. The petitioner was later placed into removal proceedings on April 9, 2012, because she had overstayed her period of nonimmigrant stay in the United States and because of new criminal convictions for Felony Forgery – Check/Commercial Instrument under 18-5-102(1)(c) of the Colorado Revised Statutes (CRS) on May 31, 2005 and again on April 9, 2012. An immigration judge ordered the petitioner removed on May 16, 2012, and she was again removed from the United States on May 29, 2012. The petitioner was thereafter encountered attempting to enter the United States using a false identity the next day on May 30, 2012. She was eventually placed into removal proceedings again on March 8, 2013. On May 13, 2013, an immigration judge ordered the petitioner removed from the United States and the Board of Immigration Appeals dismissed her appeal on October 7, 2013.

The petitioner filed the instant Form I-918 U petition on July 26, 2013. The petitioner subsequently filed a Form I-918 Supplement B and a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On September 20, 2013, the director issued a Request for Evidence (RFE), requesting, among other things, a Form I-918 Supplement B listing the petitioner's name as the victim of qualifying criminal activity in Part 1. The petitioner responded with an original letter from the certifying official.

The director denied the Form I-192 waiver application, finding the petitioner 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) (drug trafficker); 212(a)(6)(A)(i) (present without admission or parole); 212(a)(6)(C)(i); and 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport) of the Act, and determined, after analysis, that

the petitioner had not demonstrated that her waiver application warranted a favorable exercise of discretion. The director then also denied the Form I-918 U petition, because the petitioner failed to submit a Form I-918 Supplement B with the petitioner's name as the victim of qualifying criminal activity and because the petitioner was inadmissible to the United States and her Form I-192 waiver of inadmissibility had been denied. The petitioner timely appealed the denial of the Form I-198 U petition. On appeal, the petitioner submits another Form I-918 Supplement B executed by a different certifying official and certifying agency and contends that she merits a favorable exercise of discretion on her Form I-192 to waive the grounds of inadmissibility against her.

Analysis

We conduct appellate review on a *de novo* basis. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

The petitioner failed to submit a properly executed Form I-918 Supplement B signed by a certifying official from a certifying agency, which is required initial evidence when filing a Form I-918 U petition. 8 C.F.R. § 214.14(c)(2)(i). The submission of a Form I-918 Supplement B is required by statute at section 214(p)(1) of the Act ("The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification . . ."). As provided by the regulation at 8 C.F.R. § 214.14(c)(2)(i), a Form I-918 U petition "must include" as initial evidence a Form I-918 Supplement B "signed by a certifying official within the six months immediately preceding the filing of Form I-918." The petitioner here did not file a Form I-918 Supplement B with her Form I-918 U petition, and consequently, she did not file mandatory initial evidence with her petition as required by statute and regulation. Moreover, the Form I-918 Supplement B subsequently submitted was executed and dated August 8, 2013, after the filing of her nonimmigrant U petition on July 26, 2013, and thus, it does not satisfy the regulation at 8 C.F.R. § 214.14(c)(2)(i), requiring the certification to have been signed within the six-month period preceding the filing of the petition. We lack authority to waive the requirements of the statute for the certification, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials).

Accordingly, as the petitioner did not submit the required Form I-918 Supplement B with her petition, she has failed to conform to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i) for initial evidence, and she, therefore, has failed to establish eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).

Admissibility

Upon review, we also find that the director correctly determined that the instant petition may not be approved, because the petitioner is inadmissible to the United States and her waiver application has been denied.

Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), 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. 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 does not support the director’s determination of the petitioner’s inadmissibility under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. The record indicates that the petitioner last arrived in the United States on May 30, 2012, when she presented herself for inspection and sought admission to the United States using the identification documents of another individual. The petitioner was then taken into immigration custody and placed into removal proceedings as an arriving alien. Therefore, the petitioner is not present in the United States without admission and parole, and consequently, the director’s determination of inadmissibility under section 212(a)(6)(A)(i) of the Act is withdrawn.

However, upon review, we find that the record fully supports the remaining grounds of inadmissibility identified by the director under sections 212(a)(2)(A)(i)(I),(II); 212(a)(2)(C); 212(a)(6)(C)(i); and 212(a)(7)(B)(i)(I) of the Act. On appeal, the petitioner does not dispute her inadmissibility on these grounds, but rather, asserts only that her Form I-192 waiver application should be approved in the favorable exercise of discretion. However, the director denied the petitioner’s application for a waiver of inadmissibility, and as noted, 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, the petitioner 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).

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.