

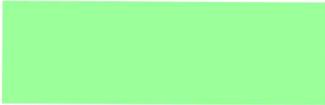
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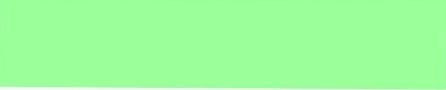
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



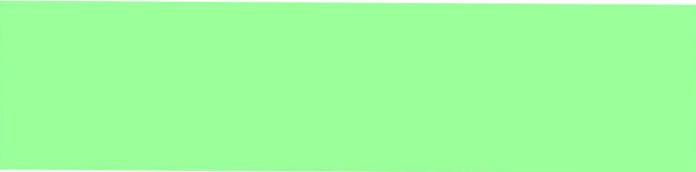
U.S. Citizenship
and Immigration
Services



Date: Office: VERMONT SERVICE CENTER FILE: 
DEC 05 2014

IN RE: PETITIONER: 
BENEFICIARY:

PETITION: Petition for Qualifying Family Member of U-1 Recipient Pursuant to Section 101(a)(15)(U)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(ii)

ON BEHALF OF PETITIONER:


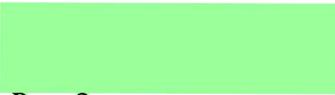
INSTRUCTIONS:

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), approved the petitioner’s U nonimmigrant visa petition (Form I-918 U petition), but denied the Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) submitted by the petitioner on behalf of the beneficiary. 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 of the beneficiary under section 101(a)(15)(U)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(ii), as a qualifying family member of a U-1 nonimmigrant.

Applicable Law

Section 101(a)(15)(U) of the Act provides for U-1 nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. Section 101(a)(15)(U)(ii) allows certain family members to also be accorded U nonimmigrant status based upon their qualifying relationship to the U-1 nonimmigrant. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 Supplement A, 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.

* * *

Facts and Procedural History

The petitioner filed the Form I-918 Supplement A on November 27, 2012 for the beneficiary, a native and citizen of India. On the same day, the beneficiary filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On October 30, 2013, the director issued a Request for Evidence (RFE) regarding the Form I-192, noting that the beneficiary 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), and 212(a)(6)(C)(i) (fraud/misrepresentation) of the Act. The beneficiary, through counsel, responded with additional evidence. On January 17, 2014, the director denied the Form I-192 finding the beneficiary 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), and 212(a)(6)(A)(i) (present without admission or parole) of the Act. The director denied the petitioner's Form I-918 Supplement A on the same date because the beneficiary did not establish his admissibility to the United States. The petitioner, through counsel, timely appealed the denial of the Form I-918 Supplement A.

On appeal, counsel does not dispute that the beneficiary is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act but claims that the beneficiary's waiver should be approved as a matter of discretion.

The Beneficiary's Inadmissibility

All nonimmigrants, including U 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 qualifying family members of U-1 nonimmigrants who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(f)(3)(ii) require the filing of a Form I-192 in conjunction with a Form I-918 Supplement A 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, the only issue before us is whether the director was correct in finding the beneficiary inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(f)(3)(ii).

Criminal court documents in the record show that the beneficiary was convicted of grand theft in violation of section 487(A) of the California Penal Code (CPC) on October 23, 2008, for which he was sentenced to 16 months imprisonment, suspended, and three years of probation. Under 8 C.F.R. § 214.1(a)(3)(i), the burden

is on the beneficiary to show that he is admissible to the United States, and counsel does not contest that the beneficiary is inadmissible under section 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude) of the Act.

In addition, the director found the beneficiary inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. The record establishes, and the beneficiary admits, that he entered the United States on August 19, 1999 without admission, inspection or parole. However, on April 11, 2000, the beneficiary was granted asylum status. On July 12, 2004, the beneficiary filed an Application to Register Permanent Resident or Adjust Status (Form I-485) based on his approved asylum status. On November 14, 2007, an immigration judge ordered the beneficiary removed from the United States, but reopened and terminated the proceedings on May 15, 2008. Although the beneficiary was granted asylum status, he was granted this status from within the United States after entering without admission or parole; therefore, he was never admitted as a refugee. As the beneficiary has not been “admitted” to the United States as a refugee, he is inadmissible under section 212(a)(6)(A)(i) of the Act. *See Matter of V-X-*, 26 I&N Dec. 147, 150 (BIA 2013) (“[A]lthough the respondent’s grant of asylum conferred a lawful status upon him, it did not entail an ‘admission.’”). Accordingly, the beneficiary is inadmissible to the United States pursuant to section 212(a)(6)(A)(i) of the Act for being present without being admitted or paroled.

The director also found the beneficiary inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violating any law relating to a controlled substance. The evidence in the record does not establish that the beneficiary has been convicted of violating any law relating to a controlled substance. In response to the RFE, counsel submitted a case print-out from the Superior Court of California, [REDACTED] indicating that the beneficiary’s charges of possession of controlled substance and paraphernalia were dismissed. Therefore, he is not inadmissible under section 212(a)(2)(A)(i)(II) of the Act. This portion of the director’s decision will be withdrawn.

Counsel does not contest the beneficiary’s inadmissibility but instead focuses her assertions on the hardship the beneficiary’s wife will suffer if he is not granted a waiver. The director denied the beneficiary’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 Supplement A. 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). The petitioner has not established that the beneficiary is admissible to the United States or that his grounds of inadmissibility under sections 212(a)(2)(A)(i) (conviction of a crime involving moral turpitude) and 212(a)(6)(A)(i) (present without admission or parole) of the Act have been waived. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(ii) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

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