

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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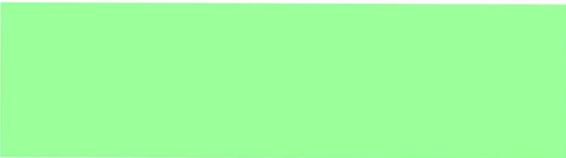


Date: **DEC 10 2014** Office: VERMONT SERVICE CENTER FILE:

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) because the petitioner was inadmissible to the United States and his 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, 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.

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in 1998 without admission, inspection or parole. A Notice to Appear was issued against the petitioner on March 29, 2013, placing him into removal proceedings, which remain pending. The petitioner filed the instant Form I-918 U petition on May 6, 2013, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) and a Form I-192 waiver application. On November 1, 2013, the director issued a Request for Evidence (RFE) and the petitioner responded with additional evidence.

The director 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)(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 his application for a waiver of inadmissibility warranted a favorable exercise of discretion. As the petitioner was found inadmissible and his 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 his petition.

Analysis

We conduct appellate review on a *de novo* basis. 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 petitioner does not dispute that he is inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole); 212(a)(7)(B)(i)(I) (not in possession of a valid passport); and 212(a)(2)(A)(i)(I) of the Act (conviction for a crime involving moral turpitude) of the Act. The petitioner asserts that the director’s decision should be reversed and that his 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).

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 appears to have met the statutory eligibility requirements for U nonimmigrant classification, he has not established that she is admissible to the United States or that the 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.