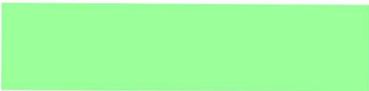




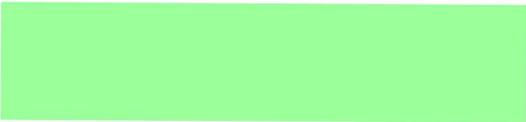
U.S. Citizenship  
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Services

(b)(6)



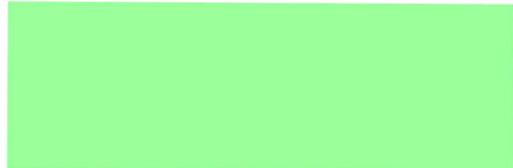
Date: Office: VERMONT SERVICE CENTER FILE: 

DEC 10 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), 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:

(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.

\* \* \*

(9) Aliens Previously Removed

(A) Certain Aliens Previously Removed

(i) Arriving Aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien’s arrival in the United States and who again seeks admission within 5 years of such removal (or within 20 years 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.

(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 with 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-

\* \* \*

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien’s departure or removal. . .

\* \* \*

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 beneficiary is a native and citizen of Mexico who claims to have initially entered the United States in May 1994 without admission, inspection or parole. In 2010, he voluntarily departed the United States, and reentered on January 18, 2011 without admission, inspection or parole. On January 22, 2011, the beneficiary was ordered removed under section 235(b)(1) of the Act, and on the next day, he was expeditiously removed from the United States. On or about November 18, 2011, the beneficiary entered the United States without admission, inspection or parole. On November 24, 2011, the beneficiary's prior order of removal was reinstated, and he was removed the next day. In December 2011, the beneficiary entered the United States without admission, inspection or parole. On August 30, 2012, the beneficiary's prior order of removal was reinstated, and he was removed from the United States on September 5, 2012.

On August 13, 2012, the petitioner filed the Form I-918 Supplement A for the beneficiary. The beneficiary also submitted an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On September 18, 2013, the director issued a Request for Evidence (RFE) regarding the Form I-192, noting that the beneficiary was possibly inadmissible under sections 212(a)(2)(A)(i)(I) (crimes involving moral turpitude) and 212(a)(6)(A)(i) (present without admission or parole) of the Act. The beneficiary responded with additional evidence. On February 6, 2014, the director denied the Form I-192 because the beneficiary was inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole), 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport), 212(a)(9)(A)(i) (arriving alien previously removed), 212(a)(9)(B)(i)(I) (unlawful presence of more than 180 days but less than one year), and 212(a)(9)(C)(i)(II) (ordered removed from the United States and reentering the United States without being admitted) of the Act; and the director did not find that a favorable exercise of her discretion was warranted. The director denied the petitioner's Form I-918 Supplement A on the same date because the beneficiary was inadmissible to the United States and his Form I-192 had been denied. 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 but claims that the beneficiary is rehabilitated, his family is suffering extreme hardship, and he deserves a waiver of his inadmissibility grounds. In support of her claims, counsel submits a brief, additional evidence and documents already included in the record.

*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).

A full review of the record supports the director's determination that the beneficiary is inadmissible under section 212(a)(9)(B)(i)(I) of the Act (unlawful presence of more than 180 days but less than one year). Under section 212(a)(9)(B)(ii) of the Act, an "alien is deemed to be unlawfully present in the United States if the alien is present . . . without being admitted or paroled." However, "[n]o period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence . . . ." See section 212(a)(9)(B)(iii) of the Act. The beneficiary does not dispute that he was unlawfully present in the United States for more than 180 days but less than one year after his 18<sup>th</sup> birthday. As such, the beneficiary is inadmissible under section 212(a)(9)(B)(i)(I) of the Act.

The beneficiary is also inadmissible under section 212(a)(9)(A)(ii) (aliens previously removed) of the Act.<sup>1</sup> The beneficiary does not dispute that he was previously removed from the United States. As such, the beneficiary is inadmissible under section 212(a)(9)(A)(ii) of the Act as well.

In addition, the director found the beneficiary inadmissible under sections 212(a)(9)(A)(i) (arriving alien previously removed) and 212(a)(9)(C)(i)(II) (ordered removed from the United States and reentering the United States without being admitted) of the Act. However, the record does not establish that the beneficiary is an arriving alien. Therefore, the beneficiary is not inadmissible under section 212(a)(9)(A)(i) of the Act. The beneficiary is also not inadmissible under section 212(a)(9)(C)(i)(II) of the Act because he is currently outside of the United States and has not, according to the record, entered or attempted to enter the United States without being admitted. The director also found the beneficiary inadmissible under sections 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. However, as noted above, the beneficiary was removed from the United States on September 5, 2012 and there is no evidence that he is present in the United States without being admitted or paroled. In addition, the beneficiary submitted evidence that he has a valid passport. Therefore, the beneficiary is not inadmissible under sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(I) of the Act. These portions of the director's decision will be withdrawn.

<sup>1</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).

On appeal, counsel does not contest the beneficiary's inadmissibility but focuses her assertions on why the director should have favorably exercised her discretion and approved his Form I-192 waiver request. 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 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.