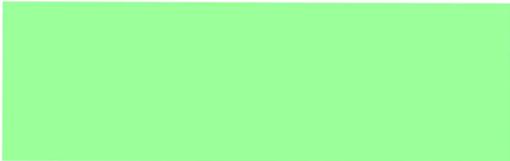


(b)(6)

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



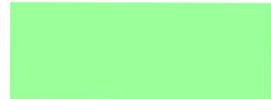
U.S. Citizenship
and Immigration
Services



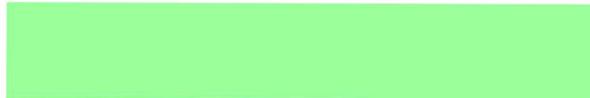
Date: **DEC 23 2014** Office:

VERMONT SERVICE CENTER

FILE:

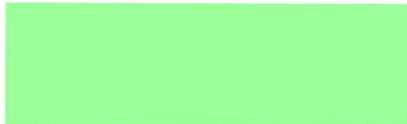


IN RE: PETITIONER:



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 is inadmissible to the United States and his Advance Application to Enter as a Nonimmigrant (Form I-192) was denied.

Applicable Law

Section 101(a)(15)(U)(i) of the Act 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 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.

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) is not in possession of a passport valid for a minimum of six months from the date of the expiration . . .

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission,

* * *

is inadmissible.

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have initially entered the United States in February 2003 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition on December 12, 2011, with an accompanying Form I-192. On March 16, 2012 and March 19, 2012, the director issued two Requests for Evidence (RFE) noting that the petitioner was inadmissible to the United States and requesting documentary evidence relating to the qualifying crime. The petitioner responded to the RFEs with additional statements and evidence, which the director found insufficient to waive his grounds of inadmissibility and she denied the Form I-192. The director determined that the petitioner was inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole) and 212(a)(7)(B)(i) (not in possession of a valid passport, nonimmigrant visa or border crossing card) of the Act.¹ The director denied the petitioner's Form I-918 U petition on the same day. Although the director determined that the petitioner was statutorily eligible for U nonimmigrant status, she denied the Form I-918 U petition because the petitioner was inadmissible to the United States and his Form I-192 waiver of inadmissibility was denied. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner, through counsel, does not dispute that the petitioner is inadmissible to the United States but claims that he has been rehabilitated and USCIS should consider the additional evidence.

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 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).

¹ The director noted that the petitioner may be inadmissible under section 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude) of the Act, but she did not make a final determination on this issue. Accordingly, our decision does not include this inadmissibility ground.

A full review of the record supports the director's determination that the petitioner is inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole) and 212(a)(7)(B)(i) (not in possession of a valid passport, nonimmigrant visa or border crossing card) of the Act. The petitioner does not dispute that he is present in the United States without admission or parole. As noted above, the petitioner admits to entering the United States in February 2003 without inspection. In addition, the petitioner has not submitted evidence that he has a valid passport, nonimmigrant visa or border crossing card. As such, the petitioner is inadmissible under sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i) of the Act.

On appeal, counsel does not contest the petitioner's grounds of inadmissibility under sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i) of the Act, but instead focuses her assertions on the reasons why the director should approve the Form I-192 as a matter of discretion. 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. *See* 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 has met the statutory eligibility requirements for U nonimmigrant classification, he has not established that he is admissible to the United States or that his grounds of inadmissibility under sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i) of the Act 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.