

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

(b)(6)



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

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DISCUSSION: The Acting 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 petition) because the petitioner was inadmissible to the United States and her Application for Advance Permission to Enter as a Nonimmigrant (Form I-192 waiver) had been denied. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner does not contest her inadmissibility on the stated ground, and instead, submits a brief and additional evidence to demonstrate that the director should favorably exercise discretion and approve the waiver.

Applicable Law and Appellate Jurisdiction

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 U petition and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The petitioner bears the burden of establishing that he or she is admissible to the United States or that any grounds of inadmissibility have been waived. *See* 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 waiver 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 that may come 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).

Facts and Procedural History

The petitioner is a native and citizen of Tonga who was admitted to the United States on July 16, 1998 as a nonimmigrant visitor. A Notice to Appear was issued against the petitioner on June 4, 2012, placing her into removal proceedings based on her California conviction for Forging/Altering/Counterfeited to wit: Check in violation of California Penal Code (CPC) 470(D) on June 23, 2011, and for remaining in the

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United States without authorization.¹ The petitioner remains in removal proceedings, and her next hearing is on March 17, 2015.

The petitioner filed the instant Form I-918 U petition on December 14, 2012, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). On January 31, 2013, the director issued a Request for Evidence (RFE) and the petitioner responded with additional evidence.

The director ultimately denied the Form I-192, finding that the petitioner was inadmissible under section 212(a)(2)(A)(i)(I) (crimes involving moral turpitude) of the Act.² After reviewing the evidence submitted in support of the waiver application, the director determined that the petitioner had not demonstrated that she warranted a favorable exercise of discretion, and denied the Form I-192. As the petitioner was found inadmissible and her Form I-192 had been denied, the director consequently denied the petitioner's Form I-918 U petition. The petitioner filed a timely appeal of the denial of her petition.

Analysis

We conduct appellate review on a *de novo* basis. On appeal, the petitioner does not dispute that she is inadmissible to the United States on the stated ground but asserts that the director's decision denying her Form I-192 waiver application was erroneous and she merits a favorable exercise of discretion such that her waiver application and Form I-918 U petition should be granted. 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. *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 appears to have met the statutory eligibility requirements for U nonimmigrant classification, she has not established that she is admissible to the United States or that her 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).

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

¹ On June [REDACTED] the petitioner was also convicted in California for Theft/Embezzlement Elder in violation of CPC 368(E).

² The petitioner is also inadmissible under section 212(a)(7)(B) as she has not shown she has a valid passport.