

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

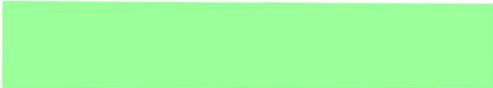
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Date: FEB 11 2014 Office: VERMONT SERVICE CENTER

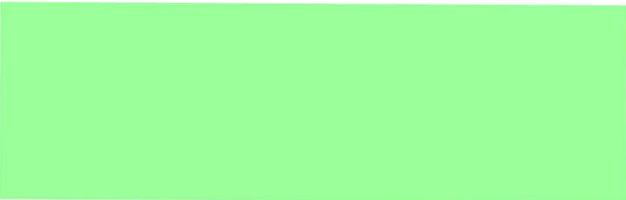


IN RE: PETITIONER:



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. 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 although the petitioner met the criteria for U-1 nonimmigrant status at section 101(a)(15)(U)(i)(I) of the Act, the petitioner was inadmissible to the United States and his request for a waiver of inadmissibility (Form I-192, Application for Advance Permission to Enter as Nonimmigrant) had been denied.

Applicable Law

Section 101(a)(15)(U) 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 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.

* * *

- (B) Failure to Attend Removal Proceeding.-Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within five years of such alien's subsequent departure or removal is inadmissible.

(C) Misrepresentation

- (i) In General.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act 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 expiration . . .

* * *

(9) Aliens Previously Removed

* * *

(B) Aliens Unlawfully Present

(i) In General.-Any alien (other than an alien lawfully admitted for permanent residence) who-

* * *

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

* * *

(C) Aliens Unlawfully Present After Previous Immigration Violations

(i) In General.-Any alien who -

* * *

(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.

Factual and Procedural History

The petitioner is a native and citizen of El Salvador who initially entered the United States in 1993 without admission, inspection or parole. On October 24, 1995, an immigration judge ordered the petitioner removed from the United States *in absentia*. On March 26, 1998, the petitioner was removed from the United States.

On an unknown date, the petitioner reentered the United States without admission, inspection or parole. On January 25, 2002, the immigration judge's removal order was reinstated, and the petitioner was removed from the United States on March 29, 2002. In September 2002, the petitioner reentered the United States without admission, inspection or parole. On August 4, 2011, the immigration judge's removal order was reinstated. On November 7, 2011, the petitioner was convicted of violating 8 U.S.C. § 1326(a), Illegal Reentry after Deportation, and was sentenced to time served. The petitioner filed the instant Form I-918 U petition with an accompanying Form I-192 on March 27, 2012. On May 7, 2012, the director issued a Request for Evidence (RFE), noting that the petitioner was inadmissible to the United States. The petitioner, through counsel, responded with additional evidence. On July 2, 2013, the director denied the Form I-918 U petition and the Form I-192. In his decision on the Form I-918 U petition, the director stated that although the petitioner met the criteria for U-1 nonimmigrant status at section 101(a)(15)(U)(i)(I) of the Act, he was inadmissible to the United States and his request for a waiver of inadmissibility had been denied. The director determined that the petitioner was inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole), 212(a)(6)(B) (failure to attend removal proceedings), 212(a)(6)(C)(i) (fraud/misrepresentation), 212(a)(7)(B)(i)(I) (nonimmigrant without valid passport), 212(a)(9)(B)(i)(II) (unlawfully present in the United States for one year or more), and 212(a)(9)(C)(i)(II) (previously ordered removed from the United States and reentering without admission) of the Act.¹ The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, counsel notes that even though the petitioner has multiple immigration violations, he takes responsibility for his actions, he has been rehabilitated, and it would be in the national and public interest that his grounds of inadmissibility be waived. He claims that the petitioner's U.S. citizen children and girlfriend rely on him for financial and emotional support, and they would suffer without his support.

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 the AAO does not have jurisdiction to review whether the director properly denied the Form I-192, the only issue before the AAO 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).

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), 212(a)(6)(B) (failure to attend removal

¹ The director noted that the petitioner may be inadmissible under sections 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude [CIMT]) and 212(a)(2)(B) (two or more convictions and sentenced to at least five years) of the Act, but he did not make a final determination. However, while it is the petitioner's burden to show he is admissible to the United States, whether he has been convicted of a CIMT or he has been sentenced to at least five years is moot as he is inadmissible on other grounds.

proceedings), 212(a)(7)(B)(i)(I) (nonimmigrant without valid passport), 212(a)(9)(B)(i)(II) (unlawfully present in the United States for one year or more), and 212(a)(9)(C)(i)(II) (previously ordered removed from the United States and reentering without admission) of the Act.

The petitioner does not dispute that he is present in the United States without admission or parole, that he is unlawfully present after previous immigration violations, or that he has been unlawfully present in the United States for one year or more. As noted above, the petitioner has a lengthy immigration history including multiple removals from the United States and reentries without inspection. As such the petitioner is inadmissible under sections 212(a)(6)(A)(i), 212(a)(9)(C)(i)(II), and 212(a)(9)(B)(i)(II) of the Act.

In addition, on October 24, 1995, the petitioner was ordered removed from the United States *in absentia* by an immigration judge. Therefore, he is inadmissible under section 212(a)(6)(B) of the Act for failing to attend a removal proceeding. The petitioner also has not submitted evidence that he has a valid passport, nor does he dispute his lack of a valid passport. As such, the petitioner is inadmissible under section 212(a)(7)(B)(i)(I) of the Act as well.

The director found the petitioner inadmissible under section 212(a)(6)(C)(i) of the Act for fraudulently or willfully misrepresenting a material fact in an attempt to procure a U.S. immigration benefit. However, the evidence in the record does not establish that the petitioner attempted to procure a U.S. immigration benefit through fraud or willful misrepresentation. Therefore, he is not inadmissible under section 212(a)(6)(C)(i) of the Act. This portion of the director's decision will be withdrawn.

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