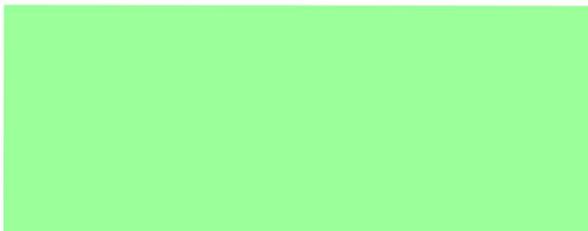


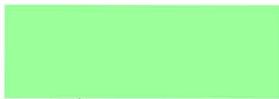
(b)(6)

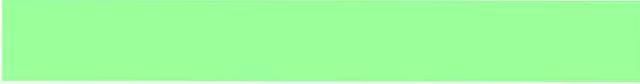
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

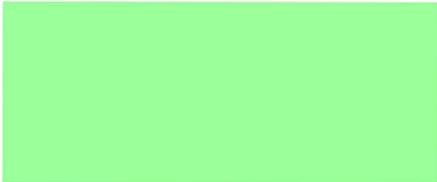


Date: JUN 26 2014 Office: VERMONT SERVICE CENTER FILE: 

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.

*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 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.

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.-

\* \* \*

(A) 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.

*Facts and Procedural History*

The petitioner is a native and citizen of Mexico who claims to have entered the United States in 1994 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition on November 22, 2011 with an accompanying Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On September 19, 2012, the director issued a Request for Evidence (RFE) noting that the petitioner was inadmissible to the United States. The petitioner responded with additional evidence. On January 7, 2013, the director found the petitioner's response insufficient to overcome his ground of inadmissibility and denied the Form I-192. The director determined that the petitioner was inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. 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, he 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, appealed the denial of the Form I-918 U petition.

On appeal, counsel does not dispute that the petitioner is inadmissible to the United States but claims that the petitioner attempted to provide all the requested evidence regarding his juvenile criminal history to USCIS and he cannot be penalized for the California Department of Justice prohibiting the release of the petitioner's juvenile record. In addition, counsel states that the petitioner is not a member of the [REDACTED]. On appeal, counsel submits a brief, a declaration from the petitioner, and 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 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).

A full review of the record supports the director's determination that the petitioner is inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. The record establishes, and the petitioner admits, that he entered the United States in 1994 without admission or parole. As such, the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act.

Although in his denial decision, the director only indicated that the petitioner was inadmissible to the United States under section 212(a)(6)(A)(i) (present without admission or parole) of the Act, a full review of the record shows that the petitioner is also inadmissible under section 212(a)(7)(B)(i)(I) (not in possession of a

valid passport) of the Act.<sup>1</sup> The petitioner has not provided a copy of 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.

On appeal, the petitioner does not contest his grounds of inadmissibility but instead focuses on his juvenile criminal record and why the director should have favorably exercised his discretion and approved his 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.

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<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).