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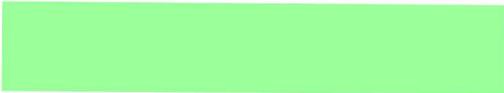
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

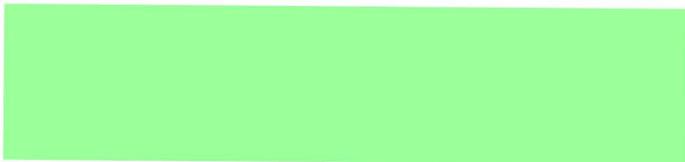


Date: **MAR 06 2014** Office: VERMONT SERVICE CENTER FILE: 

IN RE: PETITIONER:   
BENEFICIARY:

PETITION: Petition for U Nonimmigrant Classification for Qualifying Family Member of U-1 Recipient 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,

for Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), approved the petitioner's U nonimmigrant visa petition (Form I-918 U petition), but denied the Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) submitted by the petitioner on behalf of her child. 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 of her child 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:

(2) Criminal and Related Grounds

(A) Conviction of Certain Crimes

(i) In General.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of -

\* \* \*

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance . . .

\* \* \*

is inadmissible.

\* \* \*

(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.

#### *Facts and Procedural History*

The petitioner filed the Form I-918 Supplement A on January 18, 2012 for the beneficiary, a native and citizen of Mexico. On February 19, 2013, the beneficiary filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On March 27, 2013, the director issued a Request for Evidence (RFE) regarding the Form I-192, noting that the beneficiary was inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole), 212(a)(7)(B)(i)(II) (nonimmigrant without a valid passport), 212(a)(9)(B)(i)(I) (unlawful presence), and 212(a)(2)(A)(i)(II) (controlled substance violation) of the Act. The beneficiary responded with additional evidence. On September 11, 2013, 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)(II) (nonimmigrant without a valid passport), and 212(a)(2)(A)(i)(II) (controlled substance violation) 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's Form I-192 had been denied. The petitioner, through counsel, timely appealed the denial of the Form I-918 Supplement A.

On appeal, counsel contends that USCIS "improperly considered [the beneficiary's] juvenile delinquency record," "failed to mention many of the favorable considerations in [the beneficiary's] case" when denying the Form I-192 and Form I-918 Supplement A, and erred in denying the beneficiary's waiver.

#### *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 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 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 sections 212(a)(6)(A)(i) (present without admission or parole) and 212(a)(7)(B)(i)(I) (not in possession of a valid passport) of the Act. The record establishes, and the beneficiary admits, that he entered the United States on January 26, 2003 without inspection, and he has not provided a copy of a valid passport. Accordingly, the beneficiary is inadmissible under sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(I) of the Act.

The director also found the beneficiary inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violating any law relating to a controlled substance. The evidence in the record does not establish that the beneficiary violated any law relating to a controlled substance. In response to the RFE, counsel submitted a June 21, 2013 order from a Superior Court Judge, [REDACTED] County, California, indicating that the beneficiary's "juvenile file does not contain any records reflecting that [the beneficiary] was arrested or charged with possession of marijuana." Therefore, he is not inadmissible under section 212(a)(2)(A)(i)(II) of the Act. This portion of the director's decision will be withdrawn.

On appeal, counsel does not contest the beneficiary's inadmissibility but instead focuses her assertions on why the director should have favorably exercised her discretion and determined that, with his mother's support and rehabilitation programs, the beneficiary can "overcome his past" and "become a productive member of society."

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.