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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: Office: VERMONT SERVICE CENTER FILE: 

MAR 06 2014

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:

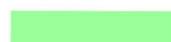
Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

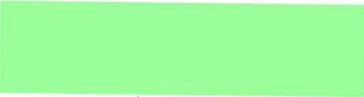
This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

 consolidated therein.



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:

(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.

* * *

(9) Aliens Previously Removed.-

* * *

(C) Aliens Unlawfully Present After Previous Immigration Violations.-

(i) In General.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of one year or more . . .

* * *

and who enters or attempts to reenter the United States without being admitted is inadmissible.

Factual and Procedural History

The petitioner filed the Form I-918 Supplement A on November 15, 2011 for the beneficiary, a native and citizen of Mexico, who also filed an accompanying Form I-192 (Application for Advance Permission to Enter as Nonimmigrant). On November 16, 2012, the director issued a Request for Evidence (RFE) regarding the Form I-192, noting that the beneficiary was inadmissible to the United States. The beneficiary responded with additional evidence. On April 24, 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)(I) (not in possession of a valid passport), and 212(a)(9)(C)(i)(I) (unlawfully present in the United States for one year or more and reentering the United States without being admitted) of the Act, and the director did not find that a favorable exercise of his 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 asserts that the director abused his discretion in denying the Form I-192 and Form I-918 Supplement A. She claims that the beneficiary has been rehabilitated, he helps support his mother and U.S. citizen daughter, he has resided in the United States since he was 11 years old, he speaks English, and is active in his church.

Analysis

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 that the beneficiary entered the United States in July 2011 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)(9)(C)(i)(I) (unlawfully present in the United States for one year or more and reentering the United States without being admitted) of the Act. Under section 212(a)(9)(B)(ii) of the Act, an "alien is deemed to be unlawfully present in the United States if the alien is present . . . without being admitted or paroled." However, "[n]o period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence . . ." See section 212(a)(9)(B)(iii) of the Act. The beneficiary was born on June 20, 1994, and he initially entered the United States in November 2005, when he was 11 years of age. He departed the United States in June 2010, and reentered without inspection, admission or parole in July 2011, when he was 17 years of age. Therefore, the beneficiary did not accrue unlawful presence before his last entry without inspection in July 2011, and there is no evidence in the record that he has departed the United States since his last entry. Therefore, the beneficiary is not inadmissible under section 212(a)(9)(C)(i)(I) 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 his discretion and approved his Form I-192 waiver request. 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.