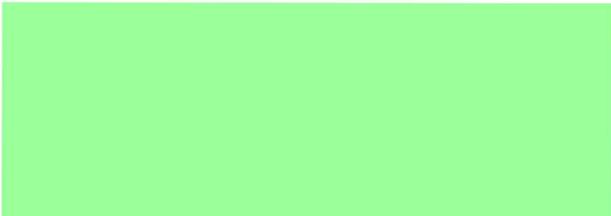


(b)(6)

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

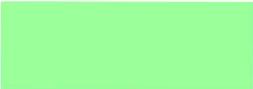


U.S. Citizenship
and Immigration
Services

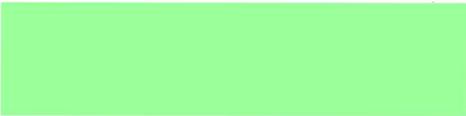


Date: **MAY 08 2014**

Office: VERMONT SERVICE CENTER

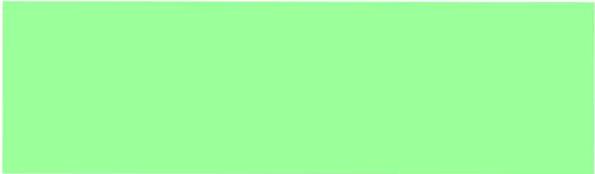
FILE: 

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.

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, in pertinent part, for U nonimmigrant classification to:

(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien . . . possesses information concerning criminal activity described in clause (iii);

(III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

* * *

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in

foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]¹

The regulation at 8 C.F.R. § 214.14(a) provides the following pertinent definitions:

(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. The term “any similar activity” refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

* * *

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying 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:

(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 –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a

¹ The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant Form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

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.

* * *

(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) Not in possession of a passport valid for a minimum of six months from the date of expiration . . .

* * *

is inadmissible.

* * *

(9) Aliens Previously Removed

* * *

(A) Certain Aliens Previously Removed

* * *

(ii) Other Aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission with 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) 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.

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

Facts and Procedural History

The petitioner is a native and citizen of El Salvador who initially entered the United States on February 4, 1976 without admission, inspection or parole. On October 3, 1990, the petitioner adjusted to lawful permanent resident status. On March 15, 1994, an immigration judge ordered the petitioner removed from the United States as a result of his April 29, 1993 conviction for possession of a controlled substance (cocaine). On June 12, 1995, the petitioner was removed from the United States. In August 2000, the petitioner reentered the United States without admission, inspection or parole. On August 26, 2002, the immigration judge's removal order was reinstated. On March 31, 2004, the petitioner was removed from the United States. On September 19, 2004, the petitioner attempted to enter the United States by presenting

a counterfeit temporary I-551. On September 20, 2004, an expedited order of removal was entered against the petitioner, and he was removed from the United States on October 27, 2004. On or about January 20, 2005, the petitioner entered the United States without admission, inspection or parole. On September 17, 2011, the immigration judge's removal order was reinstated.²

The petitioner filed the instant Form I-918 U petition on May 15, 2012, and a Form I-192 on June 29, 2012. On January 23, 2013, 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 June 10, 2013, the director found the petitioner's response insufficient to overcome his grounds of inadmissibility and denied the Form I-192. The director determined that the petitioner was inadmissible under sections 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude), 212(a)(2)(A)(i)(II) (controlled substance violations), 212(a)(6)(A)(i) (present without admission or parole), 212(a)(6)(C)(i) (fraud/misrepresentation), 212(a)(7)(A)(i)(I) (immigrant without documents), 212(a)(7)(B)(i)(I) (not in possession of a valid passport), 212(a)(9)(A)(ii) (aliens previously removed), and 212(a)(9)(C)(i)(II) (previously ordered removed from the United States and reentering without admission) 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 had been denied. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

Analysis

Inadmissibility

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 AAO does not consider whether approval of the Form I-192 should have been granted. The 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)(2)(A)(i)(I) (conviction of a crime involving moral turpitude), 212(a)(2)(A)(i)(II) (controlled substance violations), 212(a)(6)(A)(i) (present without admission or parole), 212(a)(6)(C)(i) (fraud/misrepresentation), 212(a)(7)(B)(i)(I) (not in possession of a valid passport), 212(a)(9)(A)(ii) (aliens previously removed), and 212(a)(9)(C)(i)(II) (previously ordered removed from the United States and reentering without admission) of the Act.

² At the time the petitioner was apprehended by immigration officers, he was in possession of a loaded firearm.

The record shows that the petitioner was convicted of:

- false evidences and use of documents, licenses, devices, placards, or plates in violation of section 4463 of the California Vehicle Code (CVC) on March 26, 1982, for which he was sentenced to 24 months of probation;
- carrying a concealed firearm in violation of section 12025(b) of the California Penal Code (CPC) June 10, 1983, for which he was sentenced to 120 days incarceration and 24 months of probation;
- transferring false identification documents in violation of 18 United States Code (U.S.C.) § 1028(a)(2) on September 23, 1985, for which he was sentenced to three years imprisonment and five years of probation;
- possession of a controlled substance (cocaine) for sale in violation of section 11351 of the California Health and Safety Code (H&S) on April 29, 1993, for which he was sentenced to 365 days incarceration and three years of probation; and
- possession of a controlled substance (cocaine) for sale in violation of section 11351 of the California Health and Safety Code (H&S) on May 29, 2002, for which he was sentenced to three years imprisonment.

The petitioner is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for being convicted of a crime involving moral turpitude. The petitioner's conviction for transferring false identification documents is a conviction for a crime involving moral turpitude. *See Lagunas-Salgado v. Holder*, 584 F.3d 707 (7th Cir. 2009) (selling false identification documents in violation of 18 U.S.C. § 1028(a)(2) is a crime involving moral turpitude). However, the petitioner's conviction for carrying a concealed firearm is not a conviction for a crime involving moral turpitude. Typically, convictions for unlawfully possessing a concealed firearm have not been held to constitute crimes involving moral turpitude absent evidence that the alien unlawfully possessed the firearm with the intent of harming someone. *See Matter of Granados*, 16 I&N Dec. 726, 728 (BIA 1979) (a conviction for possession of a concealed sawed-off shotgun is not a crime involving moral turpitude); *Matter of S-*, 8 I&N Dec. 344, 346 (BIA 1959) (carrying a concealed and deadly weapon with intent to use against the person of another is a crime involving moral turpitude). Here, the record contains no such evidence.

The director also found the petitioner inadmissible under section 212(a)(2)(A)(i)(II) of the Act for his controlled substance violations. Criminal court documents in the record support the director's determination that the petitioner is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violating any law relating to a controlled substance as a result of his 1993 and 2002 convictions.

The petitioner does not dispute that he is present in the United States without admission or parole, that he was previously removed from the United States, or that he is unlawfully present after previous immigration violations. 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)(A)(ii), and 212(a)(9)(C)(i)(II) of the Act. In addition, the petitioner 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 seek admission into the United States. The evidence in the record establishes that on September 19, 2004, the petitioner attempted to enter the United States by presenting a counterfeit temporary I-551. Therefore, he is inadmissible under section 212(a)(6)(C)(i) of the Act.

The director also found the petitioner inadmissible under section 212(a)(7)(A)(i)(I) of the Act for being an immigrant without documents. However, lawful permanent resident status terminates upon entry of a final administrative order of removal. 8 C.F.R. § 1.2 (*definition of lawfully admitted for permanent residence*); *see also Etuk v. Slattery*, 936 F.2d 1433, 1447 (2d Cir. 1991) (citing *Matter of Gunaydin*, 18 I&N Dec. 326 (BIA 1982)). Lawful permanent residency does not end upon commission of acts which may render the resident inadmissible or removable, but upon entry of a final administrative order of removability based on such acts. *Matter of Gunaydin*, 18 I&N Dec. at 328. Here, the petitioner's lawful permanent resident status terminated upon entry of the immigration judge's order of removal on March 15, 1994. Therefore, the petitioner is not inadmissible under section 212(a)(7)(A)(i)(I) of the Act. This portion of the director's decision will be withdrawn.

On appeal, counsel claims that the petitioner's convictions are not recent, he has been rehabilitated, he is not a risk to American society, and his positive factors outweigh his past criminal convictions. She notes that the petitioner is gainfully employed, he provides for his three U.S. citizen children and U.S. citizen wife who all reside in the United States, and his son is on active duty in the military. However, counsel does not contest the petitioner's inadmissibility but instead focuses her assertions on why the petitioner's Form I-192 waiver request should be approved. 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).

Accordingly, the petitioner is ineligible for U nonimmigrant status because he is inadmissible to the United States and the grounds of his inadmissibility have not been waived. More importantly, however, the petitioner has failed to establish that he was the victim of a qualifying crime or criminal activity, which renders him ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

Victim of a Qualifying Crime or Criminal Activity

The Form I-918 Supplement B that the petitioner submitted was signed by Detective [REDACTED] Los Angeles, California Police Department (certifying official), on November 9, 2011. The certifying official lists the criminal activity of which the petitioner was a victim as robbery, and California Penal Code (CPC) § 211, robbery, is listed as the criminal activity that was investigated or prosecuted. In addition, the Investigative Report from the Los Angeles Police Department indicates that robbery was investigated. The crime of robbery is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses "any similar activity" to the enumerated crimes, the regulation defines "any similar activity" as "criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities." 8 C.F.R. § 214.14(a)(9). Thus,

the nature and elements of the robbery offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question. The petitioner has not demonstrated that the nature and elements of the criminal offense of which he was a victim, robbery, are substantially similar to those of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

In addition, we recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. The certifying official does not indicate that any qualifying crime was investigated along with the robbery and there is no evidence that he or any other law enforcement entity investigated a qualifying crime. The petitioner has, therefore, failed to establish that he was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act, and the director's conclusion that the petitioner was statutorily eligible for U nonimmigrant classification is withdrawn.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 failed to establish that he was the victim of a qualifying crime. In addition, the petitioner 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.

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

³ 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 (9th Cir. 2003).