

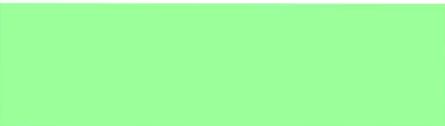
(b)(6)

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

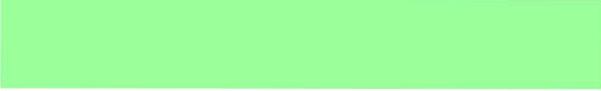


U.S. Citizenship  
and Immigration  
Services



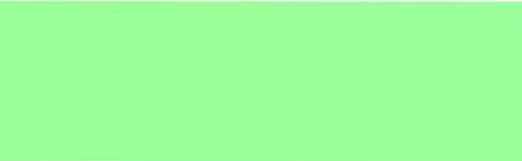
Date: Office: VERMONT SERVICE CENTER FILE: 

OCT 10 2014

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:

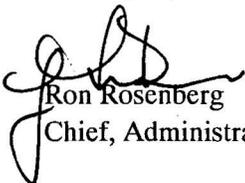


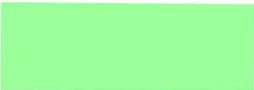
INSTRUCTIONS:

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 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:

(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 . . .

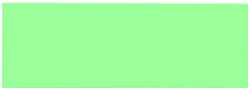
\* \* \*

is inadmissible.

\* \* \*

(C) Controlled Substance Traffickers.-Any alien who the consular officer or the Attorney General knows or has reason to believe –

- (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical . . . or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so . . .



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.

\* \* \*

(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 -

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(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.

### *Facts and Procedural History*

The petitioner is a native and citizen of Mexico who was granted temporary residence on October 7, 1988, which expired on October 7, 1991. She claims to have departed the United States in May 1999. On May 6, 1999, the petitioner applied for admission into the United States as a visitor for pleasure, and 57.1 pounds of marijuana were found concealed in the fuel tank of the vehicle. On November 23, 1999, an immigration judge ordered the petitioner removed from the United States as a result of her November 18, 1999 conviction for conspiracy to possess with intent to distribute marijuana. The petitioner was removed from the United States on the same day. The petitioner claims to have entered the United States in February 2000 or 2001 without admission, inspection or parole.<sup>1</sup> On October 2, 2008, the immigration judge's removal order was reinstated. On October 3, 2008, the petitioner was removed from the United States. On March 1, 2012, the petitioner was paroled into the United States with authorization to remain until February 28, 2013.

The petitioner filed the instant Form I-918 U petition on April 10, 2012. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On June 3, 2013, the director issued two Requests for Evidence (RFE) noting that the petitioner was inadmissible to the United States, and requesting documents regarding her arrests and convictions. Counsel responded to the RFEs with additional evidence. On November 4, 2013, the director found the petitioner's response insufficient to waive her grounds of inadmissibility and denied the Form I-192. The director determined that the petitioner was inadmissible under sections 212(a)(2)(A)(i)(II) (controlled substance violation), 212(a)(2)(C) (controlled substance trafficker), 212(a)(9)(B)(i)(II) (unlawful presence), and 212(a)(9)(C)(i)(II) (ordered removed from the United States and reentering the United States without being admitted) 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 her Form I-192 waiver of inadmissibility had been denied. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition. On appeal, counsel indicated that a brief or other evidence would be submitted within 30 days. However, as of the date of this decision, we have received no additional statements or evidence.

On January 27, 2014, an immigration judge ordered the petitioner removed from the United States. On January 28, 2014, the petitioner was removed from the United States.

### *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

---

<sup>1</sup> The petitioner provided two different dates of her alleged entry; February 2000 and February 1, 2001. Medical documents in the record show that the petitioner was present in the United States on or before August 7, 2000.

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 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 sections 212(a)(9)(B)(i)(II) (unlawful presence) and 212(a)(9)(C)(i)(II) (ordered removed from the United States and reentering the United States without being admitted) of the Act. The petitioner does not dispute that she was unlawfully present in the United States for one year or more. In addition, on November 23, 1999, an immigration judge ordered the petitioner removed from the United States and she was removed on the same day. The petitioner claims to have entered the United States in February 2000 or 2001 without admission, inspection or parole.<sup>2</sup> As such, the petitioner is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(C)(i)(II) of the Act.

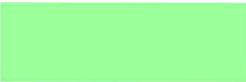
The record shows that on November 18, 1999, the petitioner was convicted of conspiracy to possess with intent to distribute marijuana, in violation of sections 846, 841(a)(1), and (B)(1)(D) of the United States Code (U.S.C.), for which she was sentenced to three years of probation. Criminal court documents in the record support the petitioner’s inadmissibility under section 212(a)(2)(A)(i)(II) of the Act for violating any law relating to a controlled substance as a result of her 1999 conviction. In addition, the petitioner’s conviction for violating U.S.C. §§ 846, 841(a)(1), and (B)(1)(D) is sufficient evidence to reasonably believe that she has been involved in illicit trafficking of a controlled substance, marijuana. Consequently, the petitioner is inadmissible under section 212(a)(2)(C) of the Act as an alien who the Attorney General knows or has reason to believe is a controlled substance trafficker.

Although in his denial decision, the director only indicated that the petitioner was inadmissible to the United States under sections 212(a)(2)(A)(i)(II) (controlled substance violation), 212(a)(2)(C) (controlled substance trafficker), 212(a)(9)(B)(i)(II) (unlawful presence), and 212(a)(9)(C)(i)(II) (ordered removed from the United States and reentering the United States without being admitted) of the Act, a full review of the record shows that the petitioner is also inadmissible under section 212(a)(9)(A)(ii) (aliens previously removed) of the Act.<sup>3</sup> As noted above, an immigration judge ordered the petitioner removed from the United States on November 23, 1999, and she was removed on the same day. On January 27, 2014, another immigration judge ordered the petitioner removed from the United States, and she was removed on January 28, 2014. Therefore, the petitioner is inadmissible under section 212(a)(9)(A)(ii) of the Act.

On appeal, counsel claims that the petitioner’s Form I-192 waiver request was erroneously denied but provides no evidence in support of his claim. The director denied the petitioner’s application for a waiver of

<sup>2</sup> The petitioner provided two different dates of her alleged entry; February 2000 and February 1, 2001.

<sup>3</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).



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). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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