

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: Office: VERMONT SERVICE CENTER FILE:

SEP 08 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)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(ii)

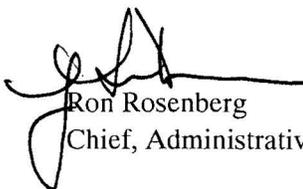
ON BEHALF OF PETITIONER:

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), granted the petitioner's U nonimmigrant status petition (Form I-918 U petition) and denied the Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) submitted by the petitioner on behalf of the beneficiary. 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 of the beneficiary 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.-

* * *

(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 filed the Form I-918 Supplement A on April 5, 2011 for the beneficiary, a native and citizen of Mexico. The beneficiary also submitted an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On June 24, 2011, the director issued a Request for Evidence (RFE) regarding the Form I-192, noting that the beneficiary was inadmissible under section 212(a)(6)(A)(i) (present without admission or parole), and possibly under sections 212(a)(2)(A)(i)(I) (crimes involving moral turpitude), 212(a)(2)(B) (two or more convictions and sentenced to five years or more confinement), 212(a)(3)(A)(ii) (unlawful activity), 212(a)(6)(C)(i) (fraud/misrepresentation), 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport), 212(a)(7)(B)(i)(II) (nonimmigrant without a valid visa), and 212(a)(9)(B)(i)(II) (unlawful presence of one year or more) of the Act. The beneficiary responded with additional evidence. On January 15, 2013, the director denied the Form I-192 because the beneficiary was inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act, and the director did not find that a favorable exercise of her discretion was warranted.¹ 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 does not dispute that the beneficiary is inadmissible to the United States but claims that the beneficiary has made improvements in his life and has a chance to be rehabilitated, and "it will be a travesty" if the beneficiary's waiver application is not approved.

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 we do not have jurisdiction to review whether the director properly denied the Form I-192, the only issue before us 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 section 212(a)(6)(A)(i) (present without admission or parole) of the Act. The record establishes, and the

¹ The director also noted that the beneficiary had multiple juvenile arrests and convictions which she considered when addressing the beneficiary's claims to rehabilitation. We note that under section 212(a)(2)(A)(ii) of the Act, an alien is not inadmissible for crimes committed when the alien was under 18 years of age. Therefore, the beneficiary's convictions before he was 18 years of age may not be considered convictions under immigration law. See *Matter of Miguel Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000).

beneficiary admits, that he entered the United States on December 1, 1993 without admission, inspection or parole. As such, the beneficiary is inadmissible under section 212(a)(6)(A)(i) of the Act.

Although in her denial decision, the director only indicated that the beneficiary was inadmissible to the United States under section 212(a)(6)(A)(i) of the Act, a full review of the record shows that the beneficiary is also inadmissible under section 212(a)(7)(B)(i)(I) (not in possession of a valid passport) of the Act.² The beneficiary has not submitted evidence that he has a valid passport. Accordingly, the beneficiary is inadmissible under section 212(a)(7)(B)(i)(I) of the Act.

On appeal, counsel does not contest the beneficiary's inadmissibility but instead focuses on the beneficiary rehabilitating from his juvenile criminal record and why the director should have favorably exercised her 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.

² 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).