



**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **APR 01 2015** 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 petitioner appealed the matter to the Administrative Appeals Office (AAO). The AAO dismissed the appeal and the petitioner filed a motion to reopen and reconsider that decision. The motions will be granted, the previous decision of the AAO will be affirmed, 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 instant Form I-918 U petition because the petitioner was inadmissible to the United States and his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192), had been denied. The petitioner timely appealed this denial, arguing not that the petitioner was not inadmissible but that the waiver should be granted in the exercise of discretion. We dismissed the appeal, affirming the decision's denial. The petitioner timely filed the instant motion to reopen and reconsider, stating that the petitioner is not inadmissible and no waiver is necessary.

Applicable Law

Section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i), 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 Form I-918U 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:

(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.

* * *

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have first entered the United States in 1983 without inspection, admission, or parole. He departed the United States in 1993 and states that he re-entered the United States through an immigration checkpoint in [REDACTED] Texas in a car with his friend.

The petitioner filed this Form I-918 U petition on October 27, 2010 with a Form I-192 waiver application.¹ On February 17, 2011, the director issued a Request for Evidence (RFE), notifying the petitioner that he appeared inadmissible to the United States and requesting evidence to establish that he warranted a favorable exercise of discretion for his waiver application. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility for U nonimmigrant status, and the director consequently denied the Form I-918 U petition and the accompanying Application for Advance Permission to Enter as a Nonimmigrant (Form I-192).

Although the director determined that the petitioner was statutorily eligible for U nonimmigrant status, she denied the Form I-918 U petition, in part, because the petitioner was inadmissible to the United States under section 212(a)(6)(A)(i) (present without admission or parole) of the Act and his Form I-192 waiver of inadmissibility was denied. As the petitioner was found inadmissible and his Form I-192 was denied, the director consequently denied the petitioner's Form I-918 U petition.

On motion, the petitioner asserts that he last entered the inspection having been admitted, inspected, and/or paroled into the United States. The petitioner states that although he has never held legal status to be present in the United States, he was waved through the border checkpoint and thus entered the country having been admitted, inspected, and/or paroled by immigration authorities.

Analysis

We conduct appellate review on a *de novo* basis. 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 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 only issue before us is whether the director was correct in finding the petitioner inadmissible to the

¹ The petitioner filed a second Form I-192, receipt number [REDACTED], on April 9, 2014. This Form I-192 waiver was denied by the director on May 9, 2014. The director found in this decision that the petitioner was inadmissible under section 212(a)(9)(C) (unlawfully present in the United States for one year or more and reentering the United States without being admitted), however, we found in our previous decision that this ground did not apply to the instant case.

United States and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

On appeal and in statements submitted with the Form I-918 petition, the petitioner stated that he last entered the United States as a passenger in a car driven by a U.S. citizen friend in 1993. In conjunction with his Form I-918 petition, the petitioner states that the officer at the checkpoint asked his friend, who was driving, about his immigration status and when his friend said “U.S. citizen,” the car was waived into the country. The petitioner states that the official at the border checkpoint did not ask him for his immigration status, for any identification, or any other questions. As a result, the petitioner claims that he was subject to a “wave through” admission and was admitted, inspected, and/or paroled under the provisions of the Act.

The Board of Immigration Appeals (Board) considered a “wave through” admission similar to the one claimed by the petitioner in *Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980). The petitioner in that case reached the border in a car with three additional people inside where the border official only asked the driver a question and then waved the car through the border crossing. The Board held that a passenger in a car that is waved through a border crossing is inspected and admitted within the contemplation of section 245 of the Act as it was then written. In that case, the case was remanded for the IJ to do additional factfinding because the petitioner’s account of the border crossing consisted only of an uncorroborated statement. The BIA again considered an unfronted crossing in *Matter of Quinantan*, 25 I&N Dec. 285 (BIA 2010), and held that an alien is admitted under section 101(a)(13)(A) of the Act if his entry is procedurally regular. See also *Hing Sum v. Holder*, 602 F.3d 1092 (9th Cir. 2010) (holding that an “admission” by statute is one that is procedurally regular).

Although the petitioner stated in conjunction with his Form I-918 petition that he last entered the United States via a “wave through” admission, the record does not reflect that the petitioner has always given the same details concerning his entry. For example, records from when the petitioner was questioned by U.S. Immigrations and Customs Enforcement (USICE) on March 11, 2010 state that the petitioner did not know when or where he entered the United States, but that he did so on foot. The petitioner also stated on his Form I-192 waiver filed on May 13, 2011 that he entered the United States in 1993 on foot. On November 5, 2011, the petitioner stated, in an interview with a USICE agent, that he did not know how or when he entered the country. These inconsistencies in the record call into question the way in which the petitioner last entered the United States so that we are unable to conclude that the petitioner entered through a “wave through” admission such as those considered by the Board in *Matter of Areguillin* or *Matter of Quinantan*.

The petitioner submitted no corroborating evidence for his Form I-918 petition statement that he was subject to a “wave through” admission by the border agent. It is the petitioner’s burden to demonstrate that he was admitted, inspected, or paroled into the United States. Because the evidence in the record does not establish that the petitioner was subject to a “wave through” admission and the petitioner admits that he did not hold a valid visa or other permission to enter the United States in 1993, section 212(a)(6)(A)(i) (present without admission or parole) of the Act applies to the

petitioner so as to render him inadmissible. Accordingly, there is no error in the previous decisions of the director and the AAO holding the petitioner inadmissible under section 212(a)(6)(A)(i) of the Act. We have no authority to determine whether a waiver should have been granted, so the petition will remain denied.

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 been met as to the petitioner's statutory eligibility for U nonimmigrant classification; however, the burden has not been met as to the petitioner's admissibility to the United States. Accordingly, the appeal will remain dismissed and the petition will remain denied.

ORDER: The motions are granted. The AAO's previous decision, dated September 18, 2014, is affirmed. The appeal remains dismissed and the petition remains denied.