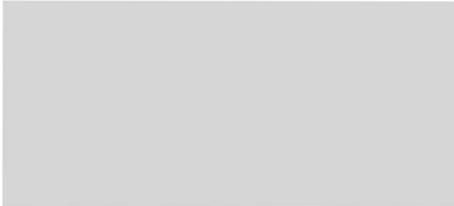


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)

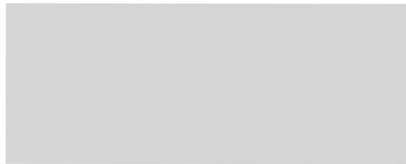


Date: APR 01 2015 Office: VERMONT SERVICE CENTER FILE:

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 Acting 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 the petitioner was inadmissible to the United States and his Application for Advance Permission to Enter as a Nonimmigrant (Form I-192 waiver) had been denied. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner contests some of the bases of the director's decision to find him inadmissible. The petitioner indicates that he has not been convicted of any drug related crime(s) and is not inadmissible on drug related grounds. The petitioner requests that the director exercise favorable discretion and grant his waiver application.

Applicable Law and Appellate Jurisdiction

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-918 U petition and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The petitioner bears the burden of establishing that he or she is admissible to the United States or that any grounds of inadmissibility have been waived. *See* 8 C.F.R § 214.1(a)(3)(i).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in 1993 without inspection, admission, or parole. The record reflects that on September 20, 1993, the applicant was arrested and charged with possession of control substance for sale and for conspiracy to commit said crime by the [REDACTED] California Sheriff's Office. The petitioner subsequently left the United States at some unknown date and on [REDACTED] 1998, attempted to enter the United States by presenting a fraudulent California birth certificate. The petitioner was denied entry and was expeditiously removed from the United States pursuant to section 235(b) of the Act on the same date. The petitioner subsequently reentered the United States at some unknown date without being inspected, admitted or paroled. On [REDACTED] 2007, the applicant was arrested in Minnesota and charged with violation of section 152.021 of the Minnesota Statutes – controlled substance crime. On May 17, 2007, the petitioner's removal order was reinstated, and on [REDACTED] 2007, he was removed from the United States. The petitioner subsequently reentered the United States at some unknown date without being inspected, admitted or paroled. In July 2010, the petitioner was convicted of driving under the influence of alcohol in violation of section 2315(b) of the California Vehicle Code. He was sentenced to 2 days in jail and three years of probation. On [REDACTED], 2010, the petitioner

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was again removed from the United States pursuant to the reinstatement of the 2007 removal order. On [REDACTED] 2010, the petitioner was paroled into the United States to assist in a murder case of which he was a witness.

The petitioner filed the instant Form I-918 U petition on February 27, 2012, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). On April 11, 2013, the director issued a Request for Evidence (RFE) noting that the petitioner was inadmissible to the United States, and he requested that the petitioner submit in part, a statement of victimization and an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). The petitioner responded with a Form I-192 and additional evidence. On May 1, 2014, the director found the petitioner's response insufficient to overcome his grounds of inadmissibility and denied the Form I-192.¹

The director determined that the petitioner was inadmissible under the following sections of the Act: 212(a)(2)(C)(i)(suspected or convicted controlled substance trafficker); 212(a)(6)(A)(i)(alien present without admission or parole); 212(a)(6)(C) (false claim to U.S. citizenship); 212(a)(9)(A)(i)(alien previously removed under 235(b) or 240 of the Act, as an arriving alien); 212(a)(9)(B)(i)(II)(alien unlawfully present in the United States for one year or more); 212(a)(9)(C)(i)(I)(alien unlawfully present in the United States for more than one year after previous immigration violation); and 212(a)(9)(C)(i)(II)(alien unlawfully present in the United States after having been ordered removed from the United States and entered or attempted to enter without being admitted). 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, she denied the Form I-918 U petition because the petitioner was inadmissible to the United States and his Form I-192 waiver of inadmissibility was denied. The petitioner appealed the denial of the Form I-918 U petition.

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

A review of the record does not support the director's determination that the petitioner is inadmissible under section 212(a)(6)(A)(i)(present without admission or parole) of the Act. Although the petitioner claimed to

¹ The petitioner timely filed a motion to reopen and a motion to reconsider with additional evidence, requesting the director to reconsider her denial decision of the Form I-192. The director reopened her decision, but ultimately denied the motion finding that the evidence failed to overcome the ground of the initial decision and affirmed her May 1, 2014 decision.

have first entered the United States without inspection, admission or parole in 1993, the petitioner was paroled into the United States on October 13, 2010 and has remained in the country since then. Therefore, the petitioner is not currently present in the United States without admission or parole, and consequently, the director's determination of inadmissibility under section 212(a)(6)(A)(i) of the Act is withdrawn.

Further review of the record does not also support the director's decision that the petitioner is inadmissible under section 212(a)(2)(C)(i) of the Act as a controlled substance trafficker, as he does not have a controlled substance conviction. Therefore, the director's determination that the petitioner is inadmissible under section 212(a)(2)(C)(i) of the Act is withdrawn.

The record supports the director's determination that the petitioner is inadmissible under section 212(a)(6)(C)(ii) of the Act for making a false claim to U.S. citizenship. The petitioner sought admission to the United States on [REDACTED] 1998, by presenting a fraudulent California birth certificate to an immigration official to in order to gain entry into the United States. The petitioner was denied entry and was expeditiously removed. On appeal, the petitioner does not dispute this inadmissibility finding. Accordingly, we concur with the director's determination that the petitioner is inadmissible under section 212(a)(6)(C) of the Act.

The evidence of record also supports the director's determination that the petitioner is inadmissible under sections 212(a)(9)(A); 212(a)(9)(B)(i)(II); and 212(a)(9)(C) of the Act. The record shows that the petitioner was removed from the United States in 1998 and 2007 and that he subsequently reentered the country without inspection, admission or parole. The record further shows that the petitioner is also inadmissible as an alien unlawfully present in the United States for more than one year in violation of sections 212(a)(9)(B)(i)(II) and 212(a)(9)(C)(i)(I) of the Act. On appeal, the petitioner does not dispute his inadmissibility under these grounds, but rather, requests that his Form I-192 waiver application be approved in the favorable exercise of discretion. The director denied the petitioner's application for a waiver of inadmissibility, and as noted, 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). Consequently, the petitioner remains inadmissible.

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). Although the petitioner has met the statutory eligibility requirements for U nonimmigrant classification, he 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, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

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