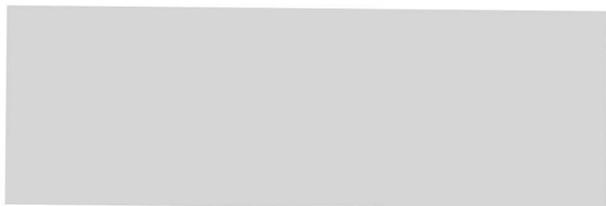




U.S. Citizenship
and Immigration
Services

(b)(6)



Date:

APR 17 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 petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 is inadmissible to the United States and his Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) had been denied. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner does not contest his inadmissibility on the stated ground,¹ and instead, submits a brief to demonstrate that the director should favorably exercise discretion and approve the waiver.

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).

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 waiver 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 that may come 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).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have initially entered the United States in 1994 or 1995, without inspection, admission, or parole. The petitioner filed the instant Form I-918 U petition on May 8, 2012, with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B). On the same day, the petitioner filed a Form I-192. On July 10, 2013, the director issued a

¹ In his brief on appeal, the petitioner lists section 212(a)(6)(A)(i) (entry without admission) of the Act as his only ground of inadmissibility. However, in his declaration submitted on appeal, the petitioner concedes that he may be inadmissible under section 212(a)(2)(A)(ii)(II) of the Act for a conviction for a crime involving moral turpitude.

Request for Evidence (RFE) of the petitioner's arrest and conviction records, and the petitioner responded with additional evidence.

The director ultimately denied the Form I-192, finding that the petitioner was inadmissible under the section 212(a)(6)(A)(i) (present without admission or parole) of the Act. After reviewing the evidence submitted in support of the waiver application, the director determined that the petitioner had not demonstrated that he warranted a favorable exercise of discretion, and denied the Form I-192. As the petitioner was found inadmissible and his Form I-192 had been denied, the director consequently denied the petitioner's Form I-918 U petition. The petitioner filed a motion to reopen and reconsider the director's decision, which the director dismissed. In his decision dismissing the motion, the director noted that the petitioner was also inadmissible under section 212(a)(2)(A)(ii)(II) (conviction of a crime involving moral turpitude (CIMT)) of the Act, for his arrest and conviction for inflicting corporal injury on a spouse/cohabitant. At the same time that he filed the motion, the petitioner filed a new Form I-192 but because the petitioner's motion was dismissed, the director denied the second Form I-192. The petitioner filed a timely appeal of the dismissal of his motion.

Analysis

We conduct appellate review on a *de novo* basis. A full review of the record supports the director's determination that the petitioner is inadmissible under section 212(a)(6)(A)(i) (present without admission or parole). The petitioner does not dispute that he is present in the United States without admission or parole. As such the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act.

The record shows that on August [REDACTED] the petitioner was convicted of inflicting corporal injury on a spouse/cohabitant, in violation of section 273.5(a)² of the California Penal Code (CPC) for which he was sentenced to 52 sessions of domestic violence counseling and three years of probation. Courts have held that a conviction under CPC § 273.5(a) is not categorically a crime involving moral turpitude, but that CPC § 273.5(a) is a divisible statute for which some subsections would qualify as a CIMT and others would not. *See Cervantes v. Holder*, 772 F.3d 583, 588 (9th Cir. 2014); *Morales-Garcia v. Holder*, 567 F.3d 1058, 1065 (9th Cir. 2009); *see also Grageda v. INS*, 12 F.3d 919, 922 (9th Cir. 1993). In his personal statement, the petitioner admitted to assaulting the mother of his child, a person of whom he was in a special or familial relationship with.³ However, the petitioner did not submit sufficient records of conviction to determine whether or not his conviction is for a crime involving moral turpitude.

² Under California law, "[a]ny person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) [describing different familial, domestic, or cohabitating relationships] is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year . . ." Cal. Penal Code § 273.5(a) (West 2015).

³ If the record of conviction reflects that the petitioner was convicted for assaulting the mother of his child, his conviction would be for a crime involving moral turpitude. *See Morales-Garcia v. Holder*, 567 F.3d at 1065; *Matter of Tran*, 21 I&N Dec. 291, 294 (BIA 1996).

However, the petitioner remains inadmissible under section 212(a)(6)(A)(i) of the Act. 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).

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 appears to have 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.