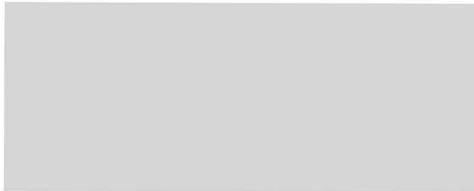




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 06 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

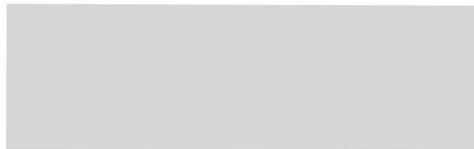
IN RE:

PETITIONER: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition. 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 was inadmissible to the United States and his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) (waiver application) was denied. On appeal, the petitioner submits a brief.

### *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 last entered the United States in 2004, as a minor, without inspection, admission, or parole. The petitioner filed the instant Form I-918 U petition and Form I-192 waiver application on April 24, 2013. On January 28, 2014, the director issued a Request for Evidence (RFE) of disposition records concerning the petitioner's 2012 arrest for domestic assault. On May 13, 2014, the director issued a second RFE of disposition records concerning the petitioner's more recent arrest for domestic assault on 2014. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the Form

I-192 waiver application, finding that the petitioner was present in the United States without admission or parole and was inadmissible under section 212(a)(6)(A)(i) of the Act (entry without admission or parole).<sup>1</sup> The director noted that the petitioner was convicted of disorderly conduct on [REDACTED] 2012 and that the [REDACTED] 2014 domestic assault charges against him remained pending. Because the petitioner was found inadmissible and his Form I-192 had been denied, the director consequently denied his Form I-918 U petition. The petitioner filed a timely appeal of the denial of his 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).

The record supports the director’s determination that the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act (entry without admission or parole). The petitioner stated on his Form I-192 waiver application that he entered the United States without admission or parole. The petitioner has not demonstrated that his last entry into the United States in 2004 was an entry with admission or parole. Therefore, the director correctly determined that the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act.

On appeal, the petitioner asserts that the director erred in finding that the 2014 domestic assault charges against him remained pending. The record reflects that the director issued the decisions denying the Form I-192 waiver application and the Form I-918 U petition on October 9, 2014. On October 20, 2014, the petitioner untimely filed a Supplemental Response to the second RFE.<sup>2</sup> The evidence included court records establishing that on [REDACTED] 2014, the 2014 domestic assault charges against the petitioner were dismissed, but that he was convicted of disorderly conduct under Minnesota Statutes Annotated § 609.72.1. The petitioner was sentenced to a term

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<sup>1</sup> On appeal, the petitioner asserts that the director incorrectly determined that he was inadmissible under section 212(a)(2)(A)(i)(II) of the Act (controlled substance violation), and denied the Form I-192 accordingly. The record does not reflect that the petitioner is inadmissible under section 212(a)(2)(A)(i)(II) of the Act and the director did not discuss in the decision any controlled substance violation. Therefore, the portion of the director’s decision referring to the petitioner’s inadmissibility under section 212(a)(2)(A)(i)(II) of the Act is hereby, withdrawn.

<sup>2</sup> The RFE response was due on August 8, 2014. The regulation at 8 C.F.R. § 103.2(b)(8)(iv) states that additional time to respond to a request for evidence may not be granted.

of imprisonment of 90 days (88 days suspended), probation of one year, the completion of a domestic violence program, and other conditions.<sup>3</sup>

The director correctly determined that the petitioner is inadmissible as an alien present in the United States without admission or parole. See § 212(a)(6)(A)(i) of the Act. The record shows that the director, in the exercise of discretion, considered the petitioner's criminal history as a negative factor when denying the Form I-192. We have no jurisdiction to review the denial of a Form I-192 waiver application 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). The petitioner has not established that he is admissible to the United States or that the 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.

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<sup>3</sup> MINN. STAT. ANN. § 609.72.1 provides, in part, that whoever engages in fighting in a public or private place, either knowing, or having reasonable grounds to know that it will or will tend to alarm, anger or disturb others or provoke an assault is guilty of disorderly conduct, a misdemeanor.