



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 14 2015**

FILE #: [REDACTED]
PETITION RECEIPT #: [REDACTED]

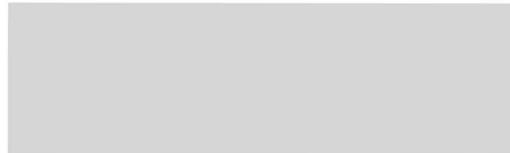
IN RE:

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) 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 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 Petition for U Nonimmigrant Status (Form I-918 U petition), as the petitioner is 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 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, 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, Petition for U Nonimmigrant Status (Form I-918 U petition), and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

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).

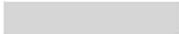
Section 212(a) of the Act, 8 U.S.C. § 1182(a) (West 2015), sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

* * *

(2) Criminal and Related Grounds

(A) Conviction of Certain Crimes

- (i) In General.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –



- (I) A crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . .

* * *

is inadmissible.

* * *

(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.

* * *

(9) Aliens previously removed

(A) Certain aliens previously removed

- (i) Arriving aliens

Any alien who has been ordered removed under section 1225(b)(1) of this title¹ or at the end of proceedings under section 1229a of this title² initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

* * *

(B) Aliens unlawfully present

- (i) In general

Any alien (other than an alien lawfully admitted for permanent residence) who--

* * *

- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

¹ Section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1).

² Section 240 of the Act, 8 U.S.C. § 1229a.

* * *

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have last entered the United States in 2002 without inspection, admission or parole. Prior to this entry, the petitioner was removed from the United States on both May 9, 1997 and March 22, 2001, and subsequently reentered the United States without inspection, admission or parole on both occasions.³ The petitioner filed the instant Form I-918 U petition on April 15, 2013. The director subsequently issued a Request for Evidence (RFE) of the petitioner's admissibility, and in response the petitioner filed a Form I-192 Application for Advance Permission to Enter as Nonimmigrant (Form I-192) (waiver application) and additional evidence, which the director found insufficient to merit a favorable exercise of discretion. As the petitioner was found inadmissible and his Form I-192 was denied, the director denied the Form I-918 U petition. The petitioner filed a timely appeal.

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. A full review of the record supports the director's determination that the petitioner is inadmissible.

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. In his brief on appeal, the petitioner does not address the director's finding that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act (aliens unlawfully present for one year or more). As noted above, the petitioner was removed from the United States on May 9, 1997 and March 22, 2001, subsequently reentered the United States, and seeks admission after being unlawfully present in the United States for more than one year. Accordingly, the petitioner is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The director also found the petitioner inadmissible under section 212(a)(9)(A)(i) of the Act (arriving aliens previously removed). The record reflects that the petitioner is not an arriving alien.⁴ Accordingly, the petitioner is not inadmissible under section 212(a)(9)(A)(i) of the Act. The director's finding to the contrary is withdrawn.

³ On July 19, 1996, the petitioner was granted voluntary departure on or before August 19, 1996 with an alternate Order of Deportation. On September 27, 2005, he was served with a new Notice to Appear and his next hearing date is set for [REDACTED]

⁴ The record shows that the petitioner was arrested in [REDACTED] California on [REDACTED] before being placed into removal proceedings.

The petitioner asserts that the director should have favorably exercised discretion and approved his Form I-192 waiver request, as he submitted evidence of rehabilitation. 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).

The petitioner disputes that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act (crime of moral turpitude).⁵ Because the petitioner has not submitted court dispositions for all of his arrests, we cannot determine whether he is inadmissible for being convicted of a crime involving moral turpitude.⁶ As the record is incomplete, we will not address this issue further. Even if the petitioner had demonstrated that he was not inadmissible under 212(a)(2)(A)(i)(I) of the Act, he remains inadmissible under sections 212(a)(6)(A)(i) and 212(a)(9)(B)(i)(II) of the Act and these grounds of inadmissibility have not been waived.

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 under sections 212(a)(6)(A)(i) and 212(a)(9)(B)(i)(II) of the Act 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.

⁵ The record shows that the petitioner was convicted on [REDACTED] of a misdemeanor violation of CAL. PENAL CODE § 12020(a), (possession/manufacture/sale of dangerous weapon (knife)) and sentenced to ten days in county jail and two years of probation; and on [REDACTED] of domestic violence battery, in violation of PENAL § 243(e), for which he was sentenced to six days incarceration in county jail, 36 months of probation, and other conditions. The former PENAL § 12020(a) has been determined to not categorically constitute a crime of moral turpitude. See *Hernandez-Gonzalez v. Holder*, 778 F.3d 793(9th Cir. 2015); see also *Matter of Serna*, 20 I. & N. Dec. 579, 584 (BIA 1992). Similarly, a conviction under CPC § 43(e)(1) is not categorically a crime of moral turpitude. See *In Re Sanudo*, 23 I. & N. Dec. 968 (BIA 2006).

⁶ The record reflects that the petitioner was arrested on both [REDACTED] and [REDACTED] for battery on a spouse. In an RFE dated March 30, 2012, issued in connection with a previous Form I-918 U petition and waiver application, the director requested court dispositions for these arrests.