



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 20 2015**

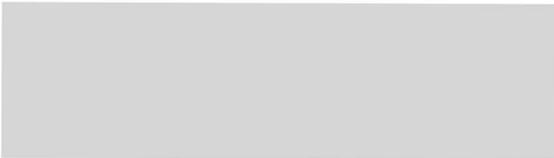
FILE #: [REDACTED]

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:



INSTRUCTIONS:

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, 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 Form I-918 Petition for U Nonimmigrant Status, because the petitioner was inadmissible to the United States and his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant to waive the grounds of inadmissibility was denied. The petitioner's brief does not contest his inadmissibility on the stated grounds, and instead, states that the waiver should be granted in the national and public interest and provides additional evidence in support of the Form I-192.

Applicable Law

Section 101(a)(15)(U) of the Act provides for U-1 nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. Furthermore, section 212(d)(14) of the Act requires Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 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 Application for Advance Permission to Enter as Nonimmigrant in conjunction with a Form I-918 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." 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 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, or

* * *

(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 1996 without inspection, admission, or parole. The petitioner filed a Form I-918 on [REDACTED] indicating that his minor son had been the victim of sexual assault. On the same day, the petitioner filed a Form I-192. On September 12, 2014, the director denied the Form I-918 because the petitioner was inadmissible and issued a decision on the same day denying the Form I-192 finding the beneficiary inadmissible under sections 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude) and 212(a)(6)(A)(i) (present without admission or parole) of the Act. The petitioner filed a timely appeal of the director's decision.

On appeal, the petitioner does not dispute that he is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) and 212(a)(6)(A)(i) of the Act, but claims that the Form I-192 should be approved as a matter of discretion.

Analysis

All nonimmigrants, including U 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). 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, the only issue before us is whether the director was correct in finding the petitioner inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(f)(3)(ii).

Criminal court documents in the record show that the petitioner was convicted of the following criminal offenses: driving with a suspended or revoked license in violation of Oregon Revised Statute (ORS) § 811.182 on [REDACTED] 2007 and again on [REDACTED] 2009 and assessed a fine on each occasion; hit and run causing property damage in violation of ORS § 811.700 on [REDACTED], 2006 for which he was sentenced to a fine and 18 months probation; hit and run causing property damage in violation of ORS § 811.700 on [REDACTED] 2003 for which he was assessed a fine;

violation of probation for driving under the influence in violation of ORS § 137.545 on [REDACTED] 2002 for which his probation was extended; driving under the influence in violation of ORS § 813.010 on [REDACTED] 2002 for which he was sentenced to pay a fine, spend four days in jail, and two years probation; and attempt to possess a controlled substance, cocaine, in violation of ORS § 475.992 on [REDACTED] 1997 for which he was sentenced to a fine and 18 months probation. Under 8 C.F.R. § 214.1(a)(3)(i), the burden is on the petitioner to show that he is admissible to the United States, and he does not contest that he is inadmissible under section 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude) of the Act.

In addition, the director found the petitioner inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. The petitioner admits that he entered the United States in 1996 without admission, inspection or parole. As the petitioner does not claim to have been “admitted” to the United States under a lawful status, the petitioner is inadmissible to the United States pursuant to section 212(a)(6)(A)(i) of the Act for being present without being admitted or paroled.

The petitioner does not contest his grounds or basis for inadmissibility but, instead, asserts that a waiver should be granted because he has been rehabilitated from past alcohol abuse, and his family would benefit from having him present as they recover from the criminal act committed against his son. 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. 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 his grounds of inadmissibility under sections 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude) and 212(a)(6)(A)(i) (present without admission or parole) of the Act have been waived. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(ii) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

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