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: AUG 2 0 2015

FILE #:
PETITION RECEIPT #:

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 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 Form I-290B, Notice of Appeal or Motion, **within 33 days of the date of this decision**. The Form I-290B website (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,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition. The Petitioner filed a motion to reconsider, which the Director dismissed. The matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Petitioner seeks nonimmigrant classification as an alien victim of certain qualifying criminal activity. Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). On appeal, the Petitioner submits a brief.

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 Petition for U Nonimmigrant Status 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 a 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." 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, a native and citizen of Mexico, represents that he entered the United States in August at the age of 10, without inspection, admission, or parole. When the Petitioner was 11 or 12 years old, he was the victim of inappropriate sexual contact by a neighbor. The Petitioner filed the instant Form I-918 on February 14, 2013, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification, and a Form I-192. The Director subsequently issued a Request for Evidence (RFE) with respect to the Petitioner's Form I-192. The Petitioner responded with additional evidence, which the Director found insufficient to establish that the Petitioner merited a favorable exercise of discretion. The Director denied the Form I-192 and, consequently, denied the Form I-918.

The Petitioner timely submitted a motion to reconsider the denial of the Form I-192, which the Director dismissed for not having additional evidence or arguments for consideration. The Petitioner timely filed an appeal of the Director's denial. In the decision, the Director concluded that the Petitioner was inadmissible under section 212(a)(6)(A)(i) of the Act (present without admission or parole). The Director further noted

that the Petitioner had a lengthy history of juvenile arrests and admitted substance abuse issues in determining that the Petitioner did not warrant a favorable exercise of discretion.

Analysis

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 to the United States, thus requiring an approved Form I-192.

On appeal, the Petitioner acknowledges that he is inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. Instead of challenging his inadmissibility, the Petitioner requests that we hold his case in abeyance to allow him to file a waiver of inadmissibility before an Immigration Judge pursuant to section 212(d)(3) of the Act.[1] The Petitioner asserts that his right to due process will be violated if he is not afforded the opportunity for an Immigration Judge to hear his application for a waiver and cites *L.D.G. v. Holder*, 744 F.3d 1022 (7th Cir. 2014), in support of his right to have his waiver application heard by an Immigration Judge.

In *L.D.G.*, the Seventh Circuit determined that an immigration judge has concurrent jurisdiction to waive statutory grounds of inadmissibility for U visa applicants under section 212(d)(3) of the Act, 8 U.S.C. § 1182(d)(3)(A). *Id.* at 1031. We note that the Seventh Circuit's decision in *L.D.G.* discusses only the Department of Justice's jurisdiction to adjudicate a waiver in the first instance. It does not make any ruling with respect to the Department of Homeland Security's concurrent adjudication of waivers, nor does it address the portion of the regulation at 8 C.F.R. § 212.17(b)(3) that is at issue here. Specifically, the regulation at 8 C.F.R. § 212.17(b)(3) states, "There is no appeal of a decision to deny a waiver." The decision in *L.D.G.* does not compel the Department of Homeland Security (USCIS) to deviate from the plain language of the regulation in its own adjudications. In addition, the holding in *L.D.G.* is not precedential outside of the Seventh Circuit, so is not directly applicable to the Petitioner, who resides in the Ninth Circuit. We further note that the Petitioner's due process rights are not infringed upon as he is without prejudice to file a subsequent Form I-918 noting any waiver granted by an Immigration Judge. Accordingly, as no appeal lies from the denial of the waiver, we are unable to review whether the Director's exercise of discretion in this matter was proper.

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).

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[1] Section 212(d)(3) provides that a waiver may be granted for certain grounds of inadmissibility by "The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General . . . in such Secretary's sole unreviewable discretion."

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