



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-Z-L-

DATE: DEC. 16, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.¹

I. 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-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).

¹ On September 3, 2015, we faxed a request to the attorney listed on the Form I-290B, Notice of Appeal or Motion, to file a properly-completed and current G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, and advised the attorney that, if we did not receive a G-28 within 15 days, we would consider the Petitioner to be self-represented. We did not receive a G-28 in response to our request and, accordingly, the Petitioner is self-represented on this appeal.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who entered the United States without inspection, admission, or parole. The Petitioner filed a Form I-918, Petition for U Nonimmigrant Status with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification on February 19, 2013. She also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, to waive her grounds of inadmissibility. The Director denied the Form I-192 and, on that basis, also denied the Form I-918. The Petitioner timely appealed the denial of the Form I-918.

III. ANALYSIS

We review these proceedings *de novo*. The Director denied the Form I-192, finding that the Petitioner was inadmissible under the following sections of the Act: 212(a)(6)(A)(i) (entry without inspection); 212(a)(9)(C) (entry without inspection with previous removal or with unlawful presence); 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport); 212(a)(2)(C)(i) (reason to believe suspected drug trafficking; and 212(a)(6)(C)(ii) (falsely claiming U.S. citizenship). After reviewing the evidence submitted in support of the Form I-192, the Director determined that the Petitioner did not demonstrate that she warranted a favorable exercise of discretion, and denied the Form I-192. As the Petitioner was found inadmissible and her Form I-192 had been denied, the Director consequently denied the Petitioner's Form I-918 U petition.

Specifically, the Director found reason to believe that the Petitioner engaged in drug trafficking based on a police report relating to an arrest in which the vehicle the Petitioner was a passenger in contained approximately six kilograms of cocaine, the seriousness of the resulting charge, and the large amount of cocaine involved and determined that the Petitioner is a member of the class of persons described at section 212(a)(2)(C)(i), 8 U.S.C. § 1182(a)(2)(C)(i), namely controlled substance traffickers. On appeal, the Petitioner asserts that the evidence does not support the Director's determination that there is reason to believe that the Petitioner is a drug trafficker.

Section 212(a)(2)(C) of the Act provides, in pertinent part:

Controlled Substance Traffickers - Any alien who the consular officer or the [Secretary, Department of Homeland Security] knows or has reason to believe –

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so . . . is inadmissible.

A finding of inadmissibility as a controlled substance trafficker must be based upon “reasonable, substantial, and probative evidence.” *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9th Cir. 2000). A reasonable basis exists to conclude that a foreign national is a controlled substance trafficker where

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the foreign national is found in possession of a large quantity of a controlled substance indicating that the drug was not intended for the foreign national's personal use. *Matter of Rico*, 16 I&N Dec. at 186.

The record shows that, on [REDACTED] 2001, the Petitioner was arrested as a passenger of a vehicle containing approximately six kilograms of cocaine. On [REDACTED] 2001, the Petitioner was charged with possession with intent to distribute five kilograms or more of cocaine, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. On [REDACTED] 2001, the Petitioner was acquitted of that charge and the case against her was dismissed. Although a large quantity of cocaine was discovered in the vehicle in which the Petitioner was a passenger, the charge against the Petitioner was dropped and the record does not contain any reasonable, substantial, and probative evidence of drug trafficking activity by the Petitioner. On that basis, we withdraw the Director's decision with respect to whether the Petitioner is inadmissible under Section 212(a)(2)(C) of the Act.

The Petitioner also asserts that her entry without inspection inadmissibility ground under section 212(a)(6)(A)(i) of the Act should be waived because she has been rehabilitated, owns a successful business, has two U.S. citizen children, and cares for her ill mother. The Petitioner does not challenge or even discuss on appeal the Director's denial of the Form I-192 under sections 212(a)(9)(C), 212(a)(7)(B)(i)(I) or 212(a)(6)(C)(ii) of the Act. Notwithstanding the Petitioner's assertions on appeal, the Director denied the Petitioner's application for a waiver of inadmissibility on grounds that were not contested by the Petitioner and, other than to determine whether the Petitioner is inadmissible on the grounds cited by the Director, we have no jurisdiction to review the denial of the Form I-192 submitted in connection with the Form I-918. *See* 8 C.F.R. § 212.17(b)(3).

IV. CONCLUSION

In this visa petition proceeding, it is the Petitioner's burden to establish eligibility for the immigration benefit sought by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also* *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-Z-L-*, ID# 15039 (AAO Dec. 16, 2015)