(b)(6)

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

Date: FEB 1 1 2015 Office: VERMONT SERVICE CENTER FILE:

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 please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

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 on multiple grounds and his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192), had been denied. On appeal, the petitioner contests only one of the grounds of inadmissibility identified by the director, and requests reopening and reconsideration of his petition on this basis.

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 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 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).

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.

* * *

(C) Misrepresentation

(i) In General.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

* * *

Facts and Procedural History

The petitioner is a native and citizen of Haiti who was paroled into the United States on March 4, 1992. He was granted asylee status, which was subsequently terminated on May 29, 2008. A Notice to Appear was issued against the petitioner on June 3, 2008, placing him into removal proceedings. An immigration judge ordered the petitioner removed from the United States on April 1, 2009, after finding him inadmissible pursuant to sections 212(a)(2)(A)(i)(I) (crimes involving moral turpitude); 212(a)(2)(A)(i)(II) (controlled substance violation); 212(a)(2)(C)(i) (controlled substance trafficking); 212(a)(6)(C)(i) (fraud or willful misrepresentation); and 212(a)(7)(A)(i)(I) (no valid immigrant visa) of the Act. *See* I.J. Dec. at 7-8. The Board of Immigration Appeals (Board) dismissed the petitioner's appeal on April 9, 2010.

The petitioner filed the instant Form I-918 U petition on May 14, 2013, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), and a Form I-192. The director denied the Form I-192, finding that the petitioner was inadmissible under sections 212(a)(2)(A)(i)(I) (crimes involving moral turpitude); 212(a)(2)(A)(i)(II) (controlled substance violation); 212(a)(2)(C)(i) (controlled substance trafficking); 212(a)(6)(A)(i) (present without admission or parole); 212(a)(6)(C)(i) (fraud or willful misrepresentation); and 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport) of the Act. After reviewing the evidence submitted in support of the waiver application, the director determined that the petitioner had not demonstrated that he warranted a favorable exercise of discretion, and denied the Form I-192. As the petitioner was found inadmissible and his Form I-192 was denied, the director consequently denied the petitioner's Form I-918 U petition. The petitioner filed a timely appeal of the denial of his petition.

Analysis

We conduct appellate review on a *de novo* basis. A review of the record does not support the director's determination of the petitioner's inadmissibility under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. The record indicates that the petitioner last entered the United States on March 4, 1992, after being paroled into the United States. Therefore, the petitioner is not currently present in the United States without admission and parole, and consequently, the director's determination of inadmissibility under section 212(a)(6)(A)(i) of the Act is withdrawn.

On appeal, the petitioner disputes only the ground of inadmissibility under 212(a)(6)(C)(i) of the Act for fraud and willful misrepresentation set forth in the director's decision. The petitioner maintains that he never lied at the time he entered the United States as to his true name, because his father had changed his name in Haiti. The petitioner's assertions on appeal do not address or overcome evidence in the record indicating

that he procured asylum by providing false information in his asylum application, including failing to disclose his multiple arrests and convictions under a different name.[1] Counsel also asserts that the petitioner lacks the mental capacity to commit fraud and submits an evaluation on appeal from Dr. Psy.D., diagnosing the petitioner with mild intellectual disability. However, Dr. does not state, and the record does not support, that the petitioner lacks the mental capacity to commit fraud or distinguish between right and wrong. Accordingly, the record supports the director's determination of the petitioner's inadmissibility under 212(a)(6)(C)(i) of the Act.

The petitioner does not dispute that he is inadmissible to the United States on the remaining grounds identified by the director and requests only reconsideration of his Form I-192 waiver application. However, as noted, 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 U petition. *See* 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 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.

[1] Based on the willful misrepresentations committed by the petitioner, USCIS terminated the petitioner's asylee status. An immigration judge, following a full hearing on the merits during the petitioner's removal proceedings, then determined the petitioner to be inadmissible under 212(a)(6)(C)(i) of the Act for procuring the benefit of asylum through fraud and willful misrepresentation, and the Board of Immigration Appeals upheld this determination. The petitioner was also found inadmissible on the remaining grounds of inadmissibility identified by the director, except for sections 212(a)(6)(A)(i)(I) and 212(a)(7)(B)(i)(I) of the Act.