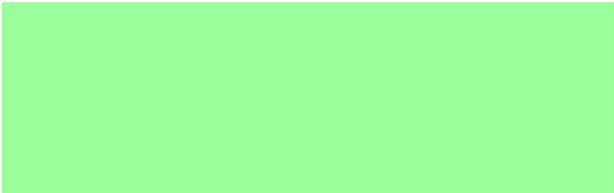


(b)(6)

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

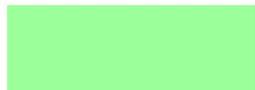


U.S. Citizenship
and Immigration
Services

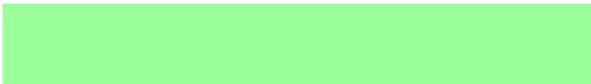


Date: **FEB 18 2015**

Office: VERMONT SERVICE CENTER

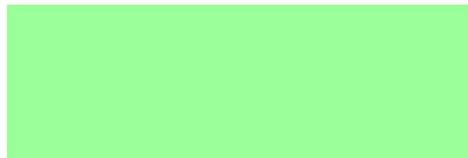
FILE: 

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:

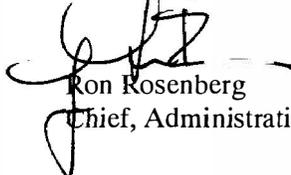


INSTRUCTIONS:

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.

Thank you,


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 The director's decision will be withdrawn and the matter returned for issuance of a new decision.

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 instant Form I-918 U petition because the petitioner was inadmissible to the United States and his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192), had been denied. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner submits a statement and additional evidence to demonstrate that he is not inadmissible and does not require a waiver and, therefore, the petition should be approved.¹

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-918U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

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.

* * *

¹ The petitioner filed a second Form I-918 U petition on October 26, 2011, bearing receipt number [REDACTED]. The director also denied this petition on January 31, 2014 for the same reasons as the instant petition. The petitioner timely appealed both denial decisions. As the facts, procedural history and basis of denial for both Form I-918 U petitions are identical, this decision shall relate to both I-290B appeal forms which are: [REDACTED] (relating to [REDACTED]); and [REDACTED] (relating to the instant petition).

- (B) Failure to attend removal proceeding. Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have first entered the United States in 1989 on a tourist visa and states that he remained in the United States for only a couple of days. The petitioner states that he re-entered the United States on March 7, 1997 on his tourist visa and remained in the country for a week. He states that he last entered the United States in July 2000 on his tourist visa through [REDACTED] California. After having been convicted of the criminal charge of practicing medicine without a license and serving the resulting sentence, the petitioner was placed into removal proceedings in January 2011. An immigration judge in [REDACTED] California ordered the petitioner removed from the United States *in absentia* on June 10, 2011. The petitioner states that he did not receive notice of the June 10, 2011 hearing through a failure of his former attorney. He states that he received no notice of the order entered against him until September 3, 2011 when he received a Notice to Removable Alien to appear for removal. The petitioner was not removed pursuant to this order, but instead the proceedings were reopened on December 16, 2011 pursuant to the petitioner's Motion to Reopen.

The petitioner filed this Form I-918 U petition on September 19, 2011 with a Form I-192 waiver application. On May 30, 2012, the director issued a Request for Evidence (RFE), notifying the petitioner that he appeared inadmissible to the United States and requesting evidence to establish that he warranted a favorable exercise of discretion for his waiver application. The petitioner responded with additional evidence.

The director denied the petitioner's Form I-192, finding that the petitioner was inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) and section 212(a)(6)(B) (failure to attend removal proceedings) of the Act, and that the petitioner had not demonstrated that his application for a waiver of inadmissibility warranted a favorable exercise of discretion. 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. 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. 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 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).

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 petitioner submitted his I-94 Multiple Entry B-2 Visitor’s Visa bearing a July 14, 2000 stamp from U.S. immigration authorizes as well as the corresponding page in his passport bearing a stamp from U.S. immigration on the same date. The evidence in the record thereby shows that the petitioner was inspected and admitted into the United States. Therefore, the petitioner is not inadmissible under section 212(a)(6)(A)(i) of the Act and the director’s contrary determination is withdrawn.

A review of the record does not support the director’s determination of the petitioner’s inadmissibility under section 212(a)(6)(B) (failure to attend removal proceedings) of the Act. The removal proceedings in question, resulting in the June 10, 2011 *in absentia* removal order, were reopened for good cause on December 16, 2011. As a result, the petitioner did not fail to attend removal proceedings without reasonable cause, and consequently, the director’s determination of inadmissibility under section 212(a)(6)(B) of the Act is also withdrawn.

Although we have withdrawn the only grounds of inadmissibility identified by the director in denying the petition, the petition may not be approved because the petitioner is statutorily ineligible for U nonimmigrant status for the following reasons and he has not sufficient demonstrated his admissibility to the United States.

The Record Lacks Evidence that the Petitioner Suffered Substantial Abuse Resulting from the Certified Criminal Activity

Eligibility for U nonimmigrant status requires a petitioner to establish, in part, that he was the victim of qualifying criminal activity from which he suffered substantial physical or mental abuse, and that he was helpful to law enforcement authorities in the investigation or prosecution of the qualifying crime. See Section 101(a)(15)(U)(i) of the Act.

The record demonstrates that the petitioner was the victim, and assisted the [REDACTED] California Police Department in the investigation, of a felonious assault committed against him in [REDACTED]. The Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B) does not specify any known or documented injuries to the petitioner resulting from the felonious assault, but does refer to an attached police report. According to the report, at the time of the incident, the policy found a 1 ½ inch laceration to the petitioner’s hand and red marks on his neck that were caused by the perpetrator. The police report indicated that the petitioner refused medical treatment at the scene but that he “would seek his own, if necessary.”

In the first declaration provided by the petitioner on September 30, 2011, he stated that he had been “severely emotionally affected” by the crime, but failed to elaborate further on this brief statement. The majority of his declaration discussed why the petitioner’s removal to Mexico would result in extreme hardship to him and his family rather than how his victimization resulted in substantial physical or mental abuse.

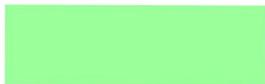
In his second declaration, dated August 23, 2012, the petitioner stated that as a result of the criminal activity perpetrated against him, he cannot concentrate when he reads due to flashbacks and that two years after the incident he left the auto repair shop where he worked and where the crime took place because of the fear that his former employee who assaulted him would come back. The petitioner also submitted a July 31, 2012 letter from [REDACTED] Ph.D, who stated that he assessed the petitioner for Post-Traumatic Stress Disorder (PTSD). Dr. [REDACTED] stated that the petitioner was a “credible victim of a violent crime” but he did not explicitly diagnose the petitioner with PTSD or any other mental health disorder.

A petitioner bears the burden of demonstrating his eligibility for U nonimmigrant status, and we will consider any credible evidence. *See* 8 C.F.R. § 214.4(c)(4). Here, although the petitioner described the criminal activity perpetrated against him, his declarations do not contain the necessary details of the impact of the criminal activity on his appearance, health, or physical or mental soundness for us to conclude, based on the present record, that he suffered substantial physical or mental abuse. *See* 8 C.F.R. § 214.4(b)(1)(outlining the factors that USCIS considers when determining whether a petitioner suffered substantial abuse).

The police report documents injuries to the petitioner’s hand and neck, but states that the petitioner refused medical treatment and the petitioner himself did not discuss whether he sought medical treatment for his injuries. The impact of the criminal activity on the petitioner’s mental soundness is not adequately described in either of the petitioner’s declarations, and Dr. [REDACTED] letter is deficient in that it relates the petitioner’s reported symptoms, but Dr. [REDACTED] does not diagnose the petitioner with any mental health condition based on such symptoms. As the record presently stands, the petitioner has failed to establish that he suffered substantial abuse as required by section 101(a)(15)(U)(i)(I) of the Act.

The Petitioner’s Inadmissibility

The record reflects that in [REDACTED] the petitioner was convicted of violating section 2052(b) of the California Business and Professions Code and sentenced to serve 60 days in jail and 36 months of probation. In 2010, the petitioner was convicted of violating section 2052(a) of the California Business and Professions Code, a felony, and sentenced to serve 365 days in jail and five years of probation. The petitioner bears the burden of demonstrating that these convictions do not render him inadmissible under section 212(a)(2) or any other section of the Act. *See* 8 C.F.R. § 214.1(a)(3)(i)(“Every nonimmigrant alien who applies for admission . . . must establish that he . . . is admissible to the United States . . .”).



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). Here we have withdrawn the grounds of inadmissibility identified by the director; however, based on our de novo review, the petitioner is ineligible for U nonimmigrant status. Accordingly, we must return the matter to the director for further action.

ORDER: The director's January 31, 2014 decision is withdrawn. The matter is returned to the Vermont Service Center for further action consistent with this decision and issuance of a new decision on the Form I-918 U petition, which if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.