

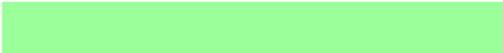


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: FEB 27 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 and her Application for Advance Permission to Enter as a Nonimmigrant (Form I-192 waiver) had been denied.¹ The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner does not contest her inadmissibility on the stated grounds, and instead, submits a brief and additional evidence to demonstrate that the director should favorably exercise discretion and approve the waiver.²

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 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 The director’s December 5, 2013, decision on the Form I-918 U petition also notes that the petitioner indicated on her petition involvement in high jacking or sabotaging a conveyance, without explanation, but did not deny the petition on this ground. We observe that the record contains an additional response to the director’s RFE, received after the director issued his decision, asserting that the checked box on the Form I-918 U petition was a clerical error. As the director did not deny the petition based on this issue, we will not discuss it further.

² In her brief, the petitioner also makes several assertions regarding her removal and removal proceedings before an Immigration Judge; however, these claims are not material to the instant petition and will not be discussed here.

Facts and Procedural History

The petitioner, a native and citizen of Mexico, represents that she first entered the United States in January 1999 without inspection, admission, or parole by an immigration officer. Her administrative record reflects that after several interactions with the criminal justice system, she was removed from the United States on May 20, 2010, pursuant to a final administrative order of removal. The petitioner further represents that she re-entered the United States in July 2010 without inspection, admission, or parole by an immigration officer. The petitioner filed the instant Form I-918 U petition on January 10, 2012, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). The director subsequently issued a Request for Evidence (RFE) and the petitioner responded with additional evidence.

The director denied the Form I-192 waiver, finding that the petitioner was inadmissible under the following sections of the Act: 212(a)(2)(A)(i)(I) (crimes involving moral turpitude); 212(a)(2)(A)(i)(II) (controlled substance violation); 212(a)(2)(C) (reason to believe - drug trafficker); 212(a)(2)(D)(i) (prostitution within the last 10 years); 212(a)(6)(A)(i) (entry without inspection); and 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport). After reviewing the evidence submitted in support of the waiver application, the director determined that the petitioner had not demonstrated that she warranted a favorable exercise of discretion. 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. The petitioner timely appealed of the denial of her petition.

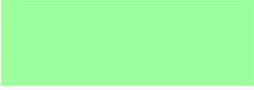
Analysis

We conduct appellate review on a *de novo* basis. On appeal, the petitioner does not dispute that she is inadmissible to the United States on the stated grounds, and we concur with the director that the record supports a finding of inadmissibility under the six subsections of the Act noted above. On appeal, the petitioner asserts that her grounds of inadmissibility are waivable, that she merits a favorable exercise of discretion, and that the director did not give her proper notice of the denial of her Form I-192 waiver application. With respect to the petitioner's concerns regarding proper notice, we observe that the director issued an RFE on March 15, 2013, to which the petitioner responded with additional evidence. Further, although there is no appeal of a Form I-192, the petitioner could have filed a motion to reopen or reconsider with the Service Center, but elected not to do so. The petitioner is correct that her grounds of inadmissibility are waivable under sections 212(d)(3) and 212(d)(14) of the Act. However, we have no jurisdiction to review the director's discretionary decision to deny the Form I-192 waiver application. 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 she is admissible to the United States or that her grounds of inadmissibility have been waived. She 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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NON-PRECEDENT DECISION

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