U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: JAN 30 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,

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 The director's decision will be withdrawn and the matter returned for entry of a new decision.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 Petition for U Nonimmigrant Status (Form I-918 U petition) because the petitioner is a convicted aggravated felon, is inadmissible to the United States, and his Application For Advance Permission to Enter as a Nonimmigrant (Form I-192) was denied. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner claims that his conviction for an aggravated felony is not a ground of inadmissibility under section 212(a)(2) of the Act and therefore he cannot be inadmissible as an aggravated felon; however, he does not contest that he is inadmissible to the United States on other inadmissibility grounds.

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).

In his decision on the Form I-192, the director did not identify any grounds of inadmissibility that apply to the petitioner, and in his decision on the Form I-918 U petition, he indicated that the petitioner is a convicted aggravated felon and is inadmissible. An aggravated felony is not a ground of inadmissibility under section 212(a)(2) of the Act. The bar for aggravated felons is found in section 237 of the Act, which prescribes grounds of deportability, not inadmissibility, and thus is not relevant to the petitioner's Form I-918 U petition. As the grounds of inadmissibility that apply to the petitioner were not addressed in the director's decision, we withdraw the director's decision and remand the matter to the director for further action and issuance of a new decision.

ORDER: The director's November 5, 2013, decision is withdrawn. The matter is returned to the director for 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.