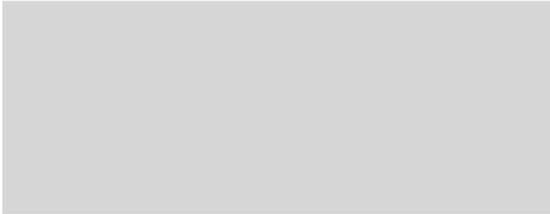




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE:

**JUL 28 2015**

FILE #:

PETITION RECEIPT #:

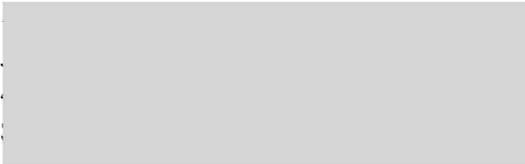
IN RE:

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

*for*  
Ron Rosenberg  
Chief, Administrative Appeals Office

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

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 on June 19, 2014, finding that although the petitioner appeared to meet the criteria for U-1 nonimmigrant status at section 101(a)(15)(U)(i) of the Act, he was inadmissible to the United States and his Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) (waiver application) was denied. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner submits a brief and additional evidence.

#### *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).

#### *Facts and Procedural History*

The petitioner, a native and citizen of El Salvador, claims to have last entered the United States in August 2012 without inspection, admission, or parole. On March 25, 2013, the petitioner was a victim of robbery and aggravated assault. On July 24, 2013, the petitioner filed the instant Form I-918 U petition, along with a U Nonimmigrant Status Certification (Form I-918 Supplement B), and a Form I-192 waiver application. The director subsequently issued two Requests for Evidence (RFE) with respect to the petitioner's Form I-192. The petitioner responded with additional evidence, which the director found insufficient to establish that the petitioner merited a favorable exercise of discretion. The director denied

the Form I-192 waiver application, and consequently denied the Form I-918 U petition. The petitioner timely appealed the denial of his Form I-918 U petition.

*Analysis*

We conduct appellate review *de novo*. As we do not have jurisdiction to review whether the director properly denied the Form I-192, the only issue before us is whether the director was correct in finding the petitioner inadmissible to the United States, thus requiring an approved Form I-192.

The record reflects that the petitioner was ordered removed to El Salvador on March 26, 2008, and was removed on April 18, 2008. The petitioner reentered the United States three more times, and was again ordered removed on both October [REDACTED], 2008 and December [REDACTED], 2011. The petitioner is currently under a Reinstatement of the Prior Order of Removal entered on May 17, 2013. On appeal, the petitioner acknowledges that he entered the United without admission, was removed and reentered on two subsequent occasions. The record does not reflect that the petitioner has a valid passport from El Salvador. Accordingly, the director correctly found that the petitioner is inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole), 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport), and 212(a)(9)(C)(i)(I)(II) (unlawful presence of more than one year and previously removed and entered or attempted to enter without being admitted).

The petitioner asserts that the director did not properly balance the positive and negative factors of the waiver application in declining to exercise favorable discretion, and did not properly assess the evidence of rehabilitation. The regulation at 8 C.F.R. § 212.17(b)(3) states: “There is no appeal of a decision to deny a waiver.” Accordingly, as no appeal lies from the denial of the waiver, we are unable to review whether the director’s exercise of discretion in this matter was proper.

*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.