



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUL 29 2015

FILE #: [REDACTED]  
PETITION RECEIPT #: [REDACTED]

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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the 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 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 does not contest his inadmissibility<sup>1</sup> and asserts only that his Form I-192 waiver application is deserving of approval in the favorable exercise of discretion.

*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).

Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

(2) Criminal and Related Grounds

(A) Conviction of Certain Crimes

(i) In General

Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

\* \* \*

is inadmissible.

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<sup>1</sup> As discussed herein, the petitioner has overcome a finding of inadmissibility under section 212(a)(7)(B)(i)(I) of the Act on appeal, but does not contest inadmissibility on the remaining grounds identified by the director.

\* \* \*

(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

\* \* \*

(ii) Falsely Claiming Citizenship

(I) In General.

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

\* \* \*

(7) Documentation requirements.-

\* \* \*

(B) Nonimmigrants.-

(i) In general.-Any nonimmigrant who-

- (I) is not in possession of a passport valid for a minimum of six months from the date of expiration . . .

is inadmissible.

\* \* \*

(9) Aliens Previously Removed

(A) Certain Aliens Previously Removed

(i) Arriving Aliens

Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiation upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

\* \* \*

(B) Aliens Unlawfully Present

- (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

\* \* \*

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

\* \* \*

(C) Aliens Unlawfully Present After Previous Immigration Violations

- (i) In general.- Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 years or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law

and who enters or attempts to reenter the United States without being admitted is inadmissible.

*Facts and Procedural History*

The petitioner is a native and citizen of Mexico who claims to have last entered the United States in September 2010, without admission, inspection or parole.<sup>2</sup> Pursuant to a Notice to Appear filed on August 17, 2011, he was placed into removal proceedings, which remain pending.

The petitioner filed the instant Form I-918 U petition on September 14, 2011, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), and a Form I-192 waiver application. The director denied the Form I-192, finding that the petitioner was inadmissible under sections 212(a)(2)(A)(i)(I) (crime involving moral turpitude); 212(a)(6)(A)(i) (present without admission or parole); 212(a)(6)(C)(ii)<sup>3</sup> (false U.S. citizenship claim); 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport); 212(a)(9)(A)(i) (arriving aliens previously ordered removed and seeking admission); 212(a)(9)(B)(i)(II) (unlawfully present for one

<sup>2</sup> The record indicates that immigration officials encountered the petitioner in the United States and granted him voluntary return on multiple occasions prior to his September 2010 entry.

<sup>3</sup> The director's decision cites section 212(a)(6)(C)(i) of the Act (willful misrepresentation or fraud), but indicates that the basis of inadmissibility was a false claim to U.S. citizenship by the petitioner, without elaborating further.

year or more and seeks admission within 10 years of departure or removal); and 212(a)(9)(C)(i)(II) (previously ordered removed and enters without admission) of the Act. After reviewing the evidence submitted in support of the waiver application, the director denied the Form I-192 waiver application, concluding that the petitioner had not shown that he 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. A full review of the record, including the evidence submitted on appeal, does not establish the petitioner's eligibility. The petitioner's claims and the evidence submitted on appeal do not overcome all of the director's grounds for denial and the appeal will be dismissed for the following reasons.

Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires 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. 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 here 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).

On appeal, the petitioner has overcome the director's determination that he is inadmissible under section 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport) of the Act, because he has now submitted a copy of his valid, unexpired passport. Accordingly, the director's determination of the petitioner's inadmissibility under section 212(a)(7)(B)(i)(I) of the Act is withdrawn.

In addition, the record does not support the director's findings that the petitioner is inadmissible under sections 212(a)(9)(A)(i) (arriving aliens previously ordered removed and seeking admission) and 212(a)(9)(C)(i)(II) (previously ordered removed and enters without admission) of the Act, both of which require that the petitioner was previously removed to trigger inadmissibility. Although the record indicates that the immigration officials had previously encountered the petitioner in the United States on several occasions before his last entry and subsequently allowed him to voluntarily return to the United States, there is no evidence that the petitioner departed the United States or had been removed pursuant to a final order of removal on any of those occasions. Although the petitioner is currently in removal proceedings, those proceedings are still pending. Accordingly, the

petitioner is not inadmissible under sections 212(a)(9)(A)(i) or 212(a)(9)(C)(i)(II) of the Act, and the director's determinations to the contrary are withdrawn.

The petitioner does not dispute the remaining grounds of inadmissibility identified by the director under sections 212(a)(2)(A)(i)(I), 212(a)(6)(A)(i), 212(a)(6)(C)(ii) and 212(a)(9)(B)(i)(II) of the Act. The record reflects that the petitioner is also inadmissible under 212(a)(9)(C)(i)(I) of the Act, as an alien who has been unlawfully present in the United States for an aggregate period of more than one year and who enters or attempts to reenter the United States without being admitted. The record indicates that at the time the petitioner last claimed to have entered the United States in September 2010 without admission or parole, he had already previously accrued, in the aggregate, the requisite one year or more of unlawful presence in the United States, rendering him inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

On appeal, the petitioner asserts that his Form I-192 waiver application merits a favorable exercise of discretion. 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). Accordingly, the petitioner has not established that he is admissible to the United States or that the 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).

### *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, that burden has not been met.

**ORDER:** The appeal is dismissed.