



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **MAR 03 2015**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

PETITIONER: [REDACTED]

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,

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 instant Form I-918 U petition because the petitioner was inadmissible to the United States and her 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 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.

#### *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-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 is a native and citizen of Mexico who claims to have first entered the United States in 1991 without inspection, admission, or parole. After having been convicted of driving while intoxicated, identity theft, writing bad checks, and wrongfully obtaining public assistance in the State of Minnesota,<sup>1</sup> the petitioner was placed in removal proceedings. The petitioner was removed

<sup>1</sup> The petitioner was convicted under Minnesota Statute § 169.121 (driver under influence of alcohol or controlled substance) on July [REDACTED]; Minn. Stat. § 609.527.3 (identity theft) on April [REDACTED] and Minn.

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on December [REDACTED] The petitioner states that she re-entered the United States in 2005 without inspection, admission, or parole.

The petitioner filed this Form I-918 U petition on April 16, 2012 with a Form I-192 waiver application. On May 22, 2013, the director issued a Request for Evidence (RFE), notifying the petitioner that she appeared inadmissible to the United States and requesting evidence to establish that she warranted a favorable exercise of discretion for her waiver application. The petitioner responded with additional evidence.

The director denied the petitioner's Form I-192, finding that the petitioner was inadmissible under sections 212(a)(2)(A)(i)(I) (crimes involving moral turpitude), 212(A)(7)(B)(i)(I) (non-immigrant without a valid passport), 212(a)(6)(A)(i) (entry without inspection), 212(a)(9)(A)(ii) (previously removed other than an arriving alien) and 212(a)(9)(C)(i)(II) (previously ordered removed and entered or attempted to enter without being admitted) of the Act, and that the petitioner had not demonstrated that her application for a waiver of inadmissibility warranted a favorable exercise of discretion. As the petitioner was found inadmissible and her 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 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, but asserts that the director's decision denying her Form I-192 waiver application was erroneous and she merits a favorable exercise of discretion such that her waiver application and Form I-918 U petition should be granted. However, 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).

#### *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). Although the petitioner appears to have met the statutory eligibility requirements for U nonimmigrant classification, she 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).

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