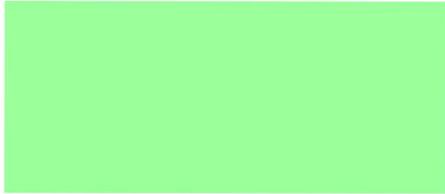




U.S. Citizenship
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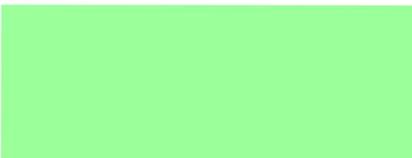


Date: **MAR 11 2015** Office: VERMONT SERVICE CENTER FILE: 

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,



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 his 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.¹ On appeal, the petitioner submits a statement and additional evidence.

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-918U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

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

* * *

(6) Illegal Entrants and Immigration Violators

¹ On the Form I-290B Notice of Appeal or Motion, the petitioner indicated that he was appealing the director's denial of both the Form I-918 U petition and the Form I-192. As noted by the director, the denial of a Form I-192 petition may not be appealed to the AAO. See 8 C.F.R. § 212.17(b)(3).

(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.-

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible

Facts and Procedural History

The petitioner is a native and citizen of Mali who claims to have first entered the United States on August 26, 2000 using a friend's passport. The petitioner filed the instant Form I-918 U petition on May 1, 2012 with an accompanying Form I-192. On May 31, 2013, the director issued a Request for Evidence (RFE) noting that the petitioner was inadmissible to the United States, and he requested that the petitioner submit copies of his arrest report, court disposition, and the law under which he was convicted. The petitioner responded with the requested evidence. On January 16, 2014, the director found the petitioner's response insufficient to waive his grounds of inadmissibility and denied the Form I-192. The director determined that the petitioner was inadmissible under sections 212(a)(6)(A)(i) (entry without inspection) and 212(a)(6)(C)(i) (fraud/misrepresentation) of the Act. The director also noted that the petitioner may also be inadmissible under section 212(a)(2)(A)(i)(I) (crime involving moral turpitude) of the Act. The director denied the petitioner's Form I-918 U petition on the same day, because the petitioner was inadmissible to the United States and his Form I-192 waiver of inadmissibility was denied. The petitioner appealed the denial of the Form I-918 U petition. On appeal, the petitioner states that he was not convicted of a crime involving moral turpitude.

Analysis

We conduct appellate review on a *de novo* basis. 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 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).

The Petitioner's Inadmissibility

A full review of the record supports the director's determination that the petitioner is inadmissible under sections 212(a)(6)(A)(i) (entry without inspection) and 212(a)(6)(C)(i) (fraud/misrepresentation) of the Act. The petitioner does not dispute that he is present in the United States without admission or parole or that he committed fraud by entering the United States using a passport issued to someone else. As such, the petitioner is inadmissible under sections 212(a)(6)(A)(i) and 212(a)(6)(C)(i) of the Act.

On appeal, the petitioner does not dispute that he is inadmissible to the United States on the above stated grounds, but instead asserts that the director erred in finding him inadmissible for having committed a crime involving moral turpitude (CIMT). The director's decision did not make a finding that the petitioner committed a CIMT, but states that the petitioner "may" be ineligible for an incident that occurred on September [REDACTED] and for which a disposition by the Criminal Court of the [REDACTED] had not been entered until after the director's decision was issued. Accordingly, the director's decision did not make a finding that the petitioner committed a CIMT, but instead relied upon the above grounds of inadmissibility. As the petitioner remains inadmissible under sections 212(a)(6)(A)(i) and 212(a)(6)(C)(i) of the Act and his grounds of inadmissibility have not been waived, he is ineligible for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act.

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.