(b)(6)

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

U.S. Citizenship and Immigration Services

Date: MAY 0 7 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 Director, Vermont Service Center (the director), denied the U 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 Form I-918 Petition for U Nonimmigrant Status (Form I-918 petition) because the petitioner is inadmissible to the United States and his Application for Advance Permission to Enter as a Nonimmigrant (Form I-192), had been denied. The petitioner appealed the denial of the Form I-918 petition. The petitioner does not contest inadmissibility on the stated grounds but instead submits a brief and evidence to demonstrate that the director should favorably exercise discretion and approve the waiver.

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 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 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 citizen of Mexico who claims to have last entered the United States without inspection, admission, or parole on July 1, 2004. The petitioner filed the instant Form I-918 petition on November 21, 2012, with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) and a Form I-192. The director subsequently issued a Request for Evidence (RFE) in support of the waiver and the petitioner submitted additional evidence. Upon review of the evidence submitted, the director determined that the petitioner did not warrant a favorable exercise of discretion and denied the Form I-192. As the Form I-192 was denied, the petitioner was determined to be inadmissible to the United States and his Form

I-918 petition was subsequently also denied. The petitioner filed a timely appeal of the denial of his Form I-918 petition.

Analysis

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

The director denied the Form I-192, finding that the petitioner was inadmissible under the following sections of the Act: 212(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude (domestic assault), 212(a)(6)(A)(i) for being present in the United States without admission or parole, 212(a)(9)(B)(i)(II) for being unlawfully present in the United States exceeding one year, and 212(a)(9)(C)(i)(I) for having reentered the United States without admission after being unlawfully present in the United States for an aggregate period exceeding one year.

On appeal, the petitioner does not contest that he is inadmissible to the United States on the stated grounds but argues that he merits a favorable exercise of discretion such that his Form I-192 and Form I-918 petition should be granted. He asserts that his behavior that led to his criminal convictions was "attributable to the victimization he experienced," that he sought help for alcoholism, poses no risk of harm to society, and waiver of his inadmissibility is in the public interest.

The director denied the petitioner's Form I-192 after having made a substantive decision on the merits of the Form I-192. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918. 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); *Matter of Chawathe,* 25 I&N Dec. 369, 375 (AAO 2010). 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.