



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF R-P-J-

DATE: NOV. 2, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Acting Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

**I. APPLICABLE LAW AND APPELLATE JURISDICTION**

Section 101(a)(15)(U)(i) of the Act 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 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).

**II. FACTS AND PROCEDURAL HISTORY**

The Petitioner is a citizen of Saint Vincent and the Grenadines who was admitted to the United States as a lawful permanent resident on November 10, 1997. She was subsequently convicted of several offenses. Based upon those convictions, the Petitioner was served with a Notice to Appear in removal proceedings on August 20, 2010, when she applied for admission to the United States as a returning lawful permanent resident. On March 14, 2011, the Petitioner was ordered removed from the United States. The Petitioner filed the instant Form I-918 petition on April 12, 2012, with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification. The Petitioner also filed a Form I-192. The director subsequently issued a request for evidence (RFE) for documentation of the Petitioner's conviction records and evidence that the waiver should be granted. The Petitioner responded with additional evidence, which the director determined did not establish that a favorable exercise of discretion was warranted 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 her Form I-918 petition was subsequently also denied. The Petitioner filed a timely appeal of the denial of the Form I-918 petition.

(b)(6)

*Matter of R-P-J-*

### III. 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 the Director's ground for denial and the appeal will be dismissed for the following reasons.

Section 212(d)(14) of the Act requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918, 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 individuals 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 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).

The director denied the Form I-192, finding that the Petitioner was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude (obtaining property by false pretenses, food stamp fraud, and a bank/insured financial institution crime) and section 212(a)(9)(A)(ii) of the Act for having been ordered removed from the United States.

Our *de novo* review of the record does not support the Director's finding that the Petitioner is inadmissible under section 212(a)(9)(A)(ii) of the Act. Inadmissibility under this provision is only triggered when an individual, who was previously ordered removed, seeks admission to the United States *after* having been removed or having departed the United States. *See* section 212(a)(9)(A)(ii) of the Act. Although the Petitioner was ordered removed, the record indicates that she has not been removed from the United States pursuant to the removal order and she has not departed the United States. She is therefore not inadmissible under section 212(a)(9)(A)(ii) of the Act and the Director's determination to the contrary is withdrawn.

Although the Petitioner is not inadmissible under section 212(a)(9)(A)(ii) of the Act, the record demonstrates, and the Petitioner does not dispute, that she is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. The record reflects that on [REDACTED] 2008, the Petitioner was convicted under South Carolina law of: obtaining property by false pretenses in violation of S.C. Code § 16-13-240; food stamp fraud in violation of S.C. Code § 16-13-430; and a bank/insured financial institution crime (bank fraud) in violation of S.C. Code § 34-03-110. She was given concurrent sentences of two years in prison, which were conditionally suspended upon the Petitioner's completion of four years of probation, and payment of \$9,207 in restitution.

In her affidavit dated August 5, 2013, the Petitioner claimed that she did not intentionally conceal her marriage from the Social Security Administration and the South Carolina Department of Social Services, and that she received duplicate social security benefits because her former spouse obtained her social security benefit payments without her knowledge. She further claimed that she was “bullied” into a guilty plea by her defense attorney who told her that a jury “would never find [her] innocent” and that if she went to trial she would end up losing her children. The Petitioner indicated that she was not informed of the immigration consequences of her guilty plea. Although the Petitioner denies her culpability for the offenses, and claims that she was unaware of the consequences of her guilty plea, we cannot look behind the Petitioner’s convictions to reassess her guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine an alien’s guilt or innocence).

On appeal, the Petitioner argues that she merits a favorable exercise of discretion such that her Form I-192 and Form I-918 should be granted. She claims that she was convicted of the crimes as a direct result of her former husband’s abuse. The Petitioner asserts that the adverse factors in her case are outweighed by her strong family and community ties to the United States, her residence in the United States for 24 years, and her serious health problems. She submits evidence on appeal to support these assertions. Although we acknowledge that the Petitioner was in an abusive relationship with her former husband, the Director denied the Petitioner’s Form I-192, and we have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918. *See* 8 C.F.R. § 212.17(b)(3). Accordingly, the Petitioner has not established that she is admissible to the United States or that the 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).

## VI. CONCLUSION

In visa petition proceedings, the petitioner bears the burden of proving eligibility for U nonimmigrant status. 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 (AAO 2010). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of R-P-J-*, ID# 14072 (AAO Nov. 2, 2015)