



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

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

MATTER OF M-M-A-P-

DATE: NOV. 10, 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 Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the Form I-918, Petition for U Nonimmigrant Status, because the Petitioner was inadmissible to the United States and her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, to waive the grounds of inadmissibility was denied. On appeal, the Petitioner does not contest her inadmissibility on the grounds stated in the Director's denial of the Form I-192, but argues that she should be granted a waiver in the Director's discretion.

#### I. APPLICABLE LAW

Section 101(a)(15)(U) of the Act provides for U-1 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 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 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." 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).

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-

...

- (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

...

(C) CONTROLLED SUBSTANCE TRAFFICKERS- Any alien who the consular officer or the Attorney General knows or has reason to believe—

- (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so;

...

(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.

...

(9)ALIENS PREVIOUSLY REMOVED. –

(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 year,

...

## II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States on May 5, 2000 without inspection, admission, or parole. The Petitioner filed a Form I-918 on June 25, 2012, indicating that she had been the victim of domestic violence. On the same day, the Petitioner filed a Form I-192. On September 8, 2014, the Director denied the Form I-918 because the Petitioner was inadmissible based on a decision by the Director on August 7, 2014, denying the Form I-192 finding the Petitioner inadmissible under sections 212(a)(2)(C) (drug trafficker), 212(a)(6)(A)(i) (present without admission or parole), 212(a)(9)(B)(i)(II) (unlawfully present one year or more), and 212(a)(9)(C)(i)(I) (previously removed and returned without permission) of the Act. The Petitioner filed a timely appeal of the Director's decision on the Form I-918.

On appeal, the Petitioner does not dispute that she is inadmissible to the United States pursuant to section 212(a)(6)(A)(i) and 212(a)(9)(B)(i)(II) of the Act, but states that she should be provided an opportunity to demonstrate that she deserves a discretionary waiver. The Petitioner contests that she is inadmissible to the United States pursuant to sections 212(a)(2)(C) and 212(a)(9)(C)(i)(II) of the Act, because, respectively, she contends that she not have a conviction related to drug trafficking and an interdiction and voluntary return at the U.S. border does not constitute a prior removal order.

In addition, the Petitioner contends on appeal that, on January 8, 2014, the Director sent a request for evidence (RFE) regarding the Form I-192 to the Petitioner's former representative and the Petitioner's new counsel filed a G-28 with her reply to the RFE, yet the Petitioner's new counsel was not served with a notice of intent to deny (NOID) the Form I-192, which was issued by the Director on June 10, 2014. As a result, the Petitioner claims that she did not respond to the NOID and, based on that lack of response, the Director denied the Form I-192.

(b)(6)

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### III. ANALYSIS

All nonimmigrants, including U 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). 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, the only issue before us is whether the Director was correct in finding the Petitioner inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(f)(3)(ii).

Criminal court documents in the record show that the Petitioner pled guilty in the U.S. District Court, District of Utah to Misprision of a Felony on [REDACTED] 2014 in violation of 18 U.S.C. § 4. Under 8 C.F.R. § 214.1(a)(3)(i), the burden is on the Petitioner to show that she is admissible to the United States. On appeal, she states that section 212(a)(2)(C) (drug trafficking) of the Act does not apply because, while she was indicted for a drug trafficking offense under 21 U.S.C. § 846, she entered into a plea agreement to Misprision of a Felony under 18 U.S.C. § 4. We concur that section 212(a)(2)(C) of the Act does not apply to the Petitioner and withdraw that portion of the Director’s decision so finding.

In addition, the Director found the Petitioner inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole), 212(a)(9)(B)(i)(II) (unlawfully present one year or more), and 212(a)(9)(C)(i)(II) (previously ordered removed and entered without being admitted) of the Act. The Petitioner admits that she entered the United States in May 5, 2000 without admission, inspection or parole after having been removed on April 25, 2000. As the Petitioner does not claim to have been “admitted” to the United States under a lawful status, the Petitioner is inadmissible to the United States pursuant to section 212(a)(6)(A)(i) of the Act for being present without being admitted or paroled. And, as the Petitioner was previously removed and admits to having re-entered the United States without being admitted, the Petitioner is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act. Finally, as the Petitioner admits to being present in the United States without admission since May 5, 2000, the Petitioner is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act.

The Petitioner does not contest the grounds or basis for inadmissibility but, instead, asserts that her counsel did not receive the NOID issued by the Director so she was not able to demonstrate that she merits a favorable exercise of the Director’s discretion. We have no jurisdiction to review the discretionary portion of the denial of a Form I-192 submitted in connection with a Form I-918. 8 C.F.R. § 212.17(b)(3). The Petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(ii) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

### IV. 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). We withdraw that portion of the Director’s decision holding the Petitioner inadmissible

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under section 212(a)(2)(C) of the Act. The Petitioner has not established that she is admissible to the United States or that her grounds of inadmissibility under sections 212(a)(6)(A)(i) (present without admission or parole), 212(a)(9)(B)(i)(II) (unlawfully present one year or more), and 212(a)(9)(C)(i)(I) (unlawfully present one year or more after having been removed) of the Act have been waived. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(ii) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-M-A-P-*, ID# 14869 (AAO Nov. 10, 2015)