



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

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

MATTER OF M-F-L-

DATE: NOV. 17, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE 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. We dismissed a subsequent appeal. The matter is now before us on a motion to reconsider. The motion will be denied.

I. 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 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 for U Nonimmigrant Status, 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 petitioners 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, Advance Permission to Enter as a Nonimmigrant, 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 indicated in our decision dismissing the Petitioner's appeal, we do not have jurisdiction to review whether the Director properly denied the Form I-192 and do not consider whether approval of the Form I-192 should have been granted. The sole 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(d)(3)(A) of the Act governs the Form I-192 and states:

Except as provided in this subsection, an alien (i) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under subsection (a) (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses

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(i) and (ii) of paragraph (3)(E) of such subsection), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (ii) who is inadmissible under subsection (a) (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General. The Attorney General shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of inadmissible aliens applying for temporary admission under this paragraph.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Tonga who was admitted to the United States on July 16, 1998, as a nonimmigrant visitor. A Notice to Appear was issued to the Petitioner on June 4, 2012, placing her into removal proceedings based on her California conviction for Forging/Altering/Counterfeited to wit: Check in violation of California Penal Code (CPC) 470(D) on [REDACTED], 2011, and for remaining in the United States without authorization.¹ The Petitioner remains in removal proceedings, and her next hearing is on [REDACTED] 2017.

The Petitioner filed a Form I-918 on December 14, 2012, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification, and a Form I-192. The Director denied the Form I-192, finding that the Petitioner was inadmissible under section 212(a)(2)(A)(i)(I) (crimes involving moral turpitude) of the Act.² After reviewing the evidence submitted in support of the Form I-192, the Director determined that the Petitioner had not demonstrated that she warranted a favorable exercise of discretion, and denied the application. As the Petitioner was found inadmissible and her Form I-192 had been denied, the Director consequently denied the Petitioner's Form I-918. The Petitioner filed an appeal of the denial of her petition with us. On December 23, 2014, we dismissed the Petitioner's appeal in a decision incorporated here by reference, finding that the Petitioner is inadmissible, we do not have jurisdiction to review the denial of a Form I-192, and the Petitioner had not shown that she was admissible to the United States or that her grounds for inadmissibility had been waived.

The Petitioner filed the instant motion to reconsider with us, and simultaneously filed a motion to reconsider with the Vermont Service Center.³

¹ On [REDACTED] 2011, the Petitioner was also convicted in California for Theft/Embezzlement Elder in violation of CPC 368(E).

² The Petitioner is also inadmissible under section 212(a)(7)(B) as she has not shown she has a valid passport.

³ The Director administratively closed the Motion to Reconsider filed before her on March 13, 2015.

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III. 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 ground but asserts that the Director's decision denying her Form I-192 was erroneous and she merits a favorable exercise of discretion. The Petitioner asks us to remand her Form I-918 to the Director with instructions to hold the petition in abeyance as an Immigration Judge in [REDACTED] determined his jurisdiction to adjudicate the Petitioner's Form I-192 pursuant to section 212(d)(3) of the Act. The Petitioner contends that to deny her request would violate her right to due process of law as noncitizens are entitled to procedural due process when threatened with deportation, and to proceed with adjudication of her Form I-918 would deny her right to a meaningful review of the denial of her Form I-192 by the Immigration Judge.

The Petitioner has not shown that the law, regulations, or due process require that the Form I-918 be held in abeyance pending a decision on the Form I-192 by the Immigration Judge. First, the regulations do not require that a Form I-918 be held in abeyance pending a decision on the Form I-192. See 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv). The Petitioner asserts that pursuant to the decision in *L.D.G. v. Holder*, the Immigration Judge has jurisdiction to adjudicate waiver applications pursuant to section 212(d)(3) of the Act for petitioners seeking U nonimmigrant status. See *L.D.G. v. Holder*, 744 F.3d 1022 (7th Cir. 2014). In *L.D.G.*, the Seventh Circuit determined that an immigration judge has concurrent jurisdiction to waive statutory grounds of inadmissibility for U visa applicants under section 212(d)(3) of the Act. *Id.* at 1031. The holding in *L.D.G.* is not precedential outside of the Seventh Circuit, so is not directly applicable to the Petitioner, who resides in the Ninth Circuit. In fact, the Board of Immigration Appeals (the Board), has held that *L.D.G.* is not persuasive authority on this issue, and that a waiver of inadmissibility pursuant to section 212(d)(3) of the Act cannot be granted in removal proceedings. See *Matter of Fueyo*, 20 I&N Dec. 84 (BIA 1989); *Matter of Sina Sunday A.K.A. Sin Sunday*, A076 564 640 - NEW, 2015 WL 799738 (DCBABR Jan. 2, 2015).

Even if *L.D.G.* were considered binding authority, *L.D.G.* discusses only the Department of Justice's jurisdiction to adjudicate a waiver in the first instance. It does not make any ruling with respect to the Department of Homeland Security's concurrent adjudication of waivers, nor does it address the portion of the regulation at 8 C.F.R. § 212.17(b)(3) that is at issue here. Specifically, the regulation at 8 C.F.R. § 212.17(b)(3) states, "There is no appeal of a decision to deny a waiver." The decision in *L.D.G.* does not compel USCIS to deviate from the plain language of the regulation in its own adjudications.

Finally, the Petitioner has not established that her right to due process has been violated as she has not demonstrated resultant prejudice. See *Hassan v. INS*, 927 F.2d 465, 469 (9th Cir. 1991) (due process violation exists only where alien demonstrates resultant prejudice). We note that the Petitioner's due process rights are not infringed upon as she is without prejudice to file a subsequent Form I-918 noting any waiver granted by an Immigration Judge.

As indicated in our prior decision, no appeal lies from the denial of the waiver and we are, therefore, unable to review whether the Director's exercise of discretion in this matter was proper.

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). The Petitioner 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 motion to reconsider is denied.

Cite as *Matter of M-F-L-*, ID# 14381 (AAO Nov. 17, 2015).