



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

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

MATTER OF A-G-B-

DATE: NOV. 30, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-918 SUPPLEMENT A, PETITION FOR QUALIFYING MEMBER OF U-1 RECIPIENT

The Petitioner seeks nonimmigrant classification of the Derivative as a qualifying family member of a U-1 nonimmigrant. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U)(ii), 8 U.S.C. § 1101(a)(15)(U)(ii). The Acting Director, Vermont Service Center, denied the petition. The Derivative filed an appeal of the Director's adverse finding, and we rejected the appeal as improperly filed. The matter is now before us on motion to reopen. The motion will be denied.

I. APPLICABLE LAW AND APPELLATE JURISDICTION

Section 101(a)(15)(U)(ii) of the Act provides for derivative U nonimmigrant classification to qualifying family members of victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. *See also* 8 C.F.R. § 214.14(f)(1) ("An alien who has petitioned for or has been granted U-1 nonimmigrant status (*i.e.*, principal alien) may petition for the admission of a qualifying family member . . . if accompanying or following to join such principal alien").

Pursuant to the regulation at 8 C.F.R. § 214.14(f)(1)(ii), the qualifying family member must be admissible to the United States. 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 Supplement A 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 qualifying family members who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17 and 214.14(f)(3)(ii) require the filing of a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, in conjunction with a Form I-918 Supplement A 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 the AAO does not have jurisdiction to review whether the Director properly denied the Form I-192, the AAO does not consider whether approval of the Form I-192 should have been granted. The only issue before the AAO is whether the Director was correct in finding the Derivative to be inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17 and 214.14(f)(3)(ii).

Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent parts:

(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
- (II) a violation of (or 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; ...

is inadmissible.

* * *

(6) Illegal entrants and immigration violators

(A) Aliens present without admission 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.

(b)(6)

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* * *

(9) Aliens Previously Removed

(A) Certain Aliens Previously Removed

.....
(ii) Other aliens.-Any alien not described in clause (i) who-

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

II. FACTS AND PROCEDURAL HISTORY

The Derivative is a citizen of Mexico who the Petitioner states last entered the United States in July 2006 without inspection, admission, or parole. The record indicates that the Derivative has been removed from the United States pursuant to a final order of removal on three different occasions: August 6, 1999, July 6, 2006, and June 18, 2007.¹ The Derivative married the Petitioner on [REDACTED] 2012. The Petitioner subsequently filed a Form I-918 on November 5, 2012, which was approved on October 1, 2014. The Petitioner filed the instant Form I-918 Supplement A on behalf on the Derivative on November 5, 2012. On the same date, the Derivative filed the Form I-192.

On February 25, 2014, the Director denied both the Form I-918 Supplement A and the Derivative's Form I-192, because the Derivative was inadmissible to the United States under the following sections of the Act: 212(a)(2)(A)(i)(II) (controlled substance violation), 212(a)(2)(C)(i) (controlled substance trafficker), 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude), 212(a)(9)(A)(ii) (alien who was previously removed), 212(a)(9)(C)(i)(I) (unlawful presence for one year aggregated and entered without being admitted), 201(a)(9)(C)(i)(II) (previously ordered removed and entered without being admitted), and 212(a)(6)(A)(i) (entry without inspection).² We

¹ The Derivative was removed from the United States pursuant to a final administrative removal order dated March 1, 1999, as an alien convicted of an aggravated felony under section 237(a)(2)(A)(iii) of the Act; pursuant to an Immigration Court order of removal dated July 5, 2006; and pursuant to a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, dated June 19, 2007. With respect to the third removal, as the date of the reinstatement order follows the date of removal, it appears that either the reinstatement or the warrant of deportation is incorrectly dated.

² The record shows that on [REDACTED] 1997, the Derivative was convicted of criminal possession of forged instrument in the second degree in violation of section 165.017 of the Oregon Revised Statutes and sentenced to 18 months of probation, community service, and fines. On [REDACTED] 1998, the Petitioner was convicted of delivery of controlled

rejected the Derivative's subsequent appeal as he was not an affected party and was not entitled to file the appeal. We alternatively indicated that we did not have jurisdiction over the appeal, as the Director denied the Form I-918 Supplement A because the Derivative was inadmissible, his Form I-192 was denied, and we have no jurisdiction to review the denial of a Form I-192. The Petitioner filed the current motion to reopen, requesting that we review the Director's denial.

A motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period may be excused if a petitioner demonstrates that the delay was reasonable and beyond her control. 8 C.F.R. § 103.5(a)(1)(i). If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). We issued our last decision on March 24, 2015, and the Petitioner filed the motion on May 15, 2015, 52 days after we issued the decision. The motion was thus untimely filed. On motion, the Petitioner submits medical documentation indicating that the Derivative was hospitalized from March 20, 2015, through March 24, 2015, after a diagnosis of end stage renal disease. She asserts that their family has been dealing with the Derivative's health issues in addition to caring for their daughter who has significant psychological issues. The Petitioner has established that failure to timely file the motion to reopen was reasonable and beyond her control.

III. ANALYSIS

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 Derivative inadmissible to the United States, thus requiring an approved Form I-192. On motion, the Petitioner does not contest the grounds of the Derivative's inadmissibility found by the Director. She argues, rather, that the Director did not properly balance the positive and negative factors of the Derivative's Form I-192 in assessing whether or not to grant the waiver as a matter of discretion. The Petitioner highlights the Derivative's physical ailments, the length of time since the crimes were committed, and the harm that denial of the Form I-918 will have on their family including their seven U.S. citizen children, one of whom has significant psychological issues.

The Petitioner asserts that we have jurisdiction to review whether the Director failed to properly consider the Form I-192 under sections 212(d)(3) and (14) of the Act, which allows for waiver in the national or public interest. The regulation at 8 C.F.R. § 212.17 states that USCIS may grant a waiver of inadmissibility under section 212(d)(3) or 212(d)(14) of the Act. In this case, the Director considered whether the Derivative merited a favorable exercise of discretion under sections 212(d)(3) and 212(d)(14) of the Act, and denied the Derivative'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. *See* 8 C.F.R. § 212.17(b)(3). Accordingly, the Petitioner has not established that the Derivative is admissible to the United States or that the grounds of inadmissibility have been waived. The Derivative is consequently ineligible for

substances in violation of section 475.992 of the Oregon Revised Statutes and sentenced to 13 months of incarceration, post-prison supervision for 24 months, and fines.

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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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The motion to reopen is denied.

Cite as *Matter of A-G-B-*, ID# 13873 (AAO Nov. 30, 2015)