



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

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

MATTER OF J-E-M-M-

DATE: OCT. 14, 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 the Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, he submitted to waive the grounds of inadmissibility was denied. The Petitioner's brief on appeal does not contest his inadmissibility and, instead, states that new evidence in the record demonstrates his rehabilitation and fitness for a waiver.

I. APPLICABLE LAW

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

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime

...

(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.

...

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States on June 18, 2002 without inspection, admission, or parole. The Petitioner filed a Form I-918 on February 20, 2013, indicating that he had been the victim of domestic violence. On the same day, the Petitioner filed a Form I-192. On April 8, 2015, the Director denied the Form I-918 because the Petitioner was inadmissible and issued a decision on the same day denying the Form I-192 finding the Petitioner inadmissible under sections 212(a)(2)(A)(i)(I) (conviction of a crime of moral turpitude) and 212(a)(6)(A)(i) (present without admission or parole) of the Act. The Petitioner filed a timely appeal of the Director's decision.

On appeal, the Petitioner does not dispute that he is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) and 212(a)(6)(A)(i) of the Act, but states that he has submitted new evidence of his rehabilitation and demonstrating his eligibility for a waiver.

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

(b)(6)

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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 was convicted of harassment on [REDACTED] 2011 in violation of Arkansas Code § 5-71-208; and domestic battery, third degree on [REDACTED] 2010 in violation of Arkansas Code § 5-13-203. We note that the Petitioner has additional arrests, however, no information was submitted to show the disposition of any additional charges. Under 8 C.F.R § 214.1(a)(3)(i), the burden is on the Petitioner to show that he is admissible to the United States, and he does not contest that he is inadmissible under section 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude) of the Act.

In addition, the Director found the Petitioner inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. The Petitioner admits that he entered the United States on June 18, 2002 without admission, inspection or parole. 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.

We further note that the passport in the record is expired. As a result, the Petitioner appears to be inadmissible to the United States pursuant to section 212(a)(7)(B)(i)(I) of the Act for being a nonimmigrant not in the possession of a valid passport.

The Petitioner does not contest the grounds or basis for inadmissibility but, instead, asserts that the Director should exercise favorable discretion in granting his waiver with his newly submitted documentation concerning his rehabilitation and the circumstances underlying his convictions. We do not have jurisdiction to review the Director’s discretionary decision to deny the waiver. 8 C.F.R. §§ 212.17, 214.14(f)(3)(ii).

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 he is admissible to the United States or that his grounds of inadmissibility under sections 212(a)(2)(A)(i)(II) (conviction of a crime involving moral turpitude) and 212(a)(6)(A)(i) (present without admission or parole) of the Act have been waived. He 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 J-E-M-M-*, ID# 14918 (AAO Oct. 14, 2015)