



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

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

MATTER OF P-C-Y-M-

DATE: OCT. 21, 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 on multiple grounds and his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, had been denied. On appeal, the Petitioner does not contest his inadmissibility¹ and asserts only that his Form I-192 waiver application is deserving of approval in the favorable exercise of discretion.

I. APPLICABLE LAW AND APPELLATE JURISDICTION

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

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

¹ As discussed herein, the Petitioner has overcome a finding of inadmissibility under section 212(a)(9)(A)(ii) of the Act on appeal, but does not contest inadmissibility on the remaining grounds identified by the Director.

(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 [Secretary of Homeland Security] 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.

* * *

(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.

(b)(6)

Matter of P-C-Y-M-

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native of [REDACTED] and a citizen of China who last entered the United States on July 17, 1997 as a nonimmigrant visitor. Pursuant to a Notice to Appear issued on October 1, 2007, he was placed into removal proceedings. On October 6, 2010, the Petitioner was ordered removed from the United States, and the Board of Immigration Appeals dismissed the Petitioner's appeal and his motion to reopen. The Petitioner filed the instant Form I-918 on April 9, 2013, with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification. The Director denied the Petitioner's Form I-192, concluding that the Petitioner had not shown that he warranted a favorable exercise of discretion. As the Petitioner was found inadmissible and his Form I-192 was denied, the Director consequently denied the Petitioner's Form I-918. The Petitioner filed a timely appeal of the denial of his Form I-918 and a motion to reopen and reconsider the denial of his Form I-192. The Director affirmed the decision to deny the Form I-192, finding that the Petitioner was inadmissible under sections 212(a)(2)(A)(i)(I) (crime involving moral turpitude), 212(a)(2)(A)(i)(II) (controlled substance violation), 212(a)(2)(C) (controlled substance trafficker), and 212(a)(9)(A)(ii) (alien previously ordered removed) of the Act.²

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).

² The Director initially found the Petitioner inadmissible under sections 212(a)(2)(A)(i)(I) (crimes involving moral turpitude), 212(a)(2)(B) (multiple criminal convictions), and 212(a)(2)(C) (controlled substance trafficker) of the Act. In her decision on the Petitioner's motion to reopen and reconsider the denial of the Form I-192, the Director amended her determination by withdrawing the finding of inadmissibility under section 212(a)(2)(B) of the Act, and adding two additional grounds of inadmissibility under sections 212(a)(2)(A)(i)(II) (controlled substance violation) and 212(a)(9)(A)(ii) (alien previously ordered removed) of the Act.

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 he has not been removed from the United States pursuant to the removal order and he has not departed the United States. He 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 he is inadmissible under the remaining grounds of inadmissibility identified by the Director, namely, sections 212(a)(2)(A)(i)(I) (crime involving moral turpitude), 212(a)(2)(A)(i)(II) (controlled substance violation), and 212(a)(2)(C) (controlled substance trafficker) of the Act.³

On appeal, the Petitioner asserts that his Form I-192 merits a favorable exercise of discretion. However, as noted, 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 he is admissible to the United States or that the grounds of inadmissibility have been waived. He 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).

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 appeal is dismissed.

Cite as *Matter of P-C-Y-M-*, ID# 14187 (AAO Oct. 21, 2015)

³ We acknowledge that the Petitioner did not have the opportunity on appeal to address the Director's finding of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act for a violation of a law relating to a controlled substance. Nevertheless, the Petitioner remains inadmissible under sections 212(a)(2)(A)(i)(I) (crime involving moral turpitude) and 212(a)(2)(C) (controlled substance trafficker) of the Act, and he has not contested these grounds of inadmissibility on appeal.