



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

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

MATTER OF R-R-C-

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. 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.

**I. APPLICABLE LAW**

Section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i), provides for U 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, 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 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 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 Application for 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 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 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 . . .

...

- (B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more 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; or

...

## (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, a native and citizen of Jamaica, entered the United States on October 14, 1982 as a Lawful Permanent Resident. While he was still a Lawful Permanent Resident, the Petitioner filed a Form I-918 on June 13, 2014, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification, and a Form I-192. The Director subsequently issued a Request for Evidence (RFE) with respect to the Form I-192. The Petitioner responded with additional evidence, which the Director found insufficient to establish that the Petitioner merited a favorable exercise of discretion. The Director denied the Form I-192 and, consequently, denied the Form I-918. The Petitioner timely filed an appeal of the Director's denial.

On appeal, the Petitioner does not dispute that he is inadmissible to the United States pursuant to subsections 212(a)(2)(A)(i)(II), 212(a)(2)(B), 212(a)(2)(C) and 212(a)(6)(A)(i) of the Act, but states that he should be given the opportunity to pursue a waiver of inadmissibility before an Immigration Judge.

### 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 Petitioner inadmissible to the United States, thus requiring an approved Form I-192.

On appeal, the Petitioner acknowledges that he is inadmissible under sections 212(a)(2)(A)(i)(II) (controlled substance violation), 212(a)(2)(B) (two or more convictions and sentence over 5 years), 212(a)(2)(C) (controlled substance trafficker), and 212(a)(6)(A)(i) (present without admission or parole) of the Act. Instead of challenging his inadmissibility, the Petitioner claims that he should be afforded the opportunity to pursue a waiver of inadmissibility before an Immigration Judge. The Petitioner cites *L.D.G. v. Holder*, 744 F.3d 1022 (7th Cir. 2014) in support of his right to have a waiver application heard by an Immigration Judge.

In *L.D.G.*, the U.S. Court of Appeals for the Seventh Circuit determined that the U.S. Department of Justice, acting through Immigration Judges and the Board of Immigration Appeals, has concurrent jurisdiction with the U.S. Department of Homeland Security, of which USCIS is a component, to waive statutory grounds of inadmissibility for U visa applicants under section 212(d)(3) of the Act, 8 U.S.C. § 1182(d)(3)(A). *Id.* at 1031. We note that the Seventh Circuit's decision in *L.D.G.* discusses only the U.S. Department of Justice's concurrent jurisdiction to adjudicate a waiver of inadmissibility but does not make any ruling with respect to the U.S. Department of Homeland Security's adjudication of waivers, nor does it directly address the portion of the regulation at 8 C.F.R. § 212.17(b)(3) that is at issue here. 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 8 C.F.R. § 212.17(b)(3) in its own adjudications and, on that basis, we do not have jurisdiction to review whether the Director properly denied the Form I-192. In addition, the holding in *L.D.G.* is not precedential outside of the Seventh Circuit and is not directly applicable to the Petitioner, who resides in the Eleventh Circuit.

The Petitioner also claims on appeal that the holding by the U.S. Court of Appeals for the Eleventh Circuit in *Ferreira v. U.S. Atty Gen.*, 714 F.3d 1240 (11th Cir. 2013), mandates that we allow the U.S. Department of Justice to adjudicate a waiver application. In *Ferreira*, the Eleventh Circuit determined that an Immigration Judge and the BIA did not apply the correct standards in denying a continuance in removal proceedings where an individual was the beneficiary of an approved employment-based immigrant visa petition. The Eleventh Circuit held that, because the employment-based immigrant visa at issue had a priority date approximately six years in the future, it was an appropriate factor to be considered under *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009), but that it should not be the only factor considered.

The Petitioner's reliance on *Ferreira* is misplaced. First, the instant appeal does not involve removal proceedings but an administrative appeal and, in any event, whether or not a continuance of removal proceedings should be granted to allow an Immigration Judge to adjudicate a waiver application has not been raised by the Petitioner on appeal. In fact, the U.S. Department of Justice has already adjudicated a waiver application on behalf of the Petitioner: on April 1, 2014, an Immigration Judge denied the Petitioner's request for a waiver of inadmissibility pursuant to Section 212(c) of the Act and, on August 24, 2014, the Board of Immigration Appeals affirmed that denial.<sup>1</sup> Second, the record indicates that removal proceedings involving the Petitioner have been concluded and the Petitioner is not the beneficiary of a previously-approved immigrant visa petition so the factors enumerated in *Hashmi* to be weighed by an Immigration Judge or the BIA when considering a request for continuance do not apply. As a result, the Eleventh Circuit's holding in *Ferreira* does not compel USCIS to deviate from the plain language of the regulation at 8 C.F.R. § 212.17(b)(3) in the adjudication of this matter.

We further note that the Petitioner's due process rights are not infringed upon as he is without prejudice to file a subsequent Form I-918 noting any waiver that may be granted by an Immigration Judge in the future. Accordingly, as no appeal lies from the denial of the waiver, we are 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). Although the Petitioner appears to have met the statutory eligibility requirements for U nonimmigrant classification, he has not established that he is admissible to the United States or that his 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).

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<sup>1</sup> Former section 212(c) of the Act provides that an alien lawfully admitted for permanent residence who temporarily proceeds abroad voluntarily and not under an order of deportation, and who is returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted to the United States in the discretion of the Attorney General despite the applicability of certain grounds of exclusion specified in INA Section 212(a). This waiver was expanded to also be available to lawful permanent residents who did not proceed abroad, but risked losing their LPR status due to charges of deportability or removability. See *Francis v. INS*, 532 F.2d 268 (2d Cir. 1976); *Matter of Silva*, 16 I&N Dec. 26 (BIA 1976). Section 212(c) relief applies only to charges of deportability or removability for which there are comparable grounds of exclusion or inadmissibility. 8 C.F.R. Section 1212.3(f)(5); *Matter of Hernandez-Casillas*, 20 I&N Dec. 262 (BIA 1990). Section 212(c) relief remains available to aliens, irrespective of when they were put into proceedings, if their "convictions were obtained through plea agreements [prior to April 1, 1997] and who, notwithstanding those convictions, would have been eligible for 212(c) relief at the time of their plea under the law then in effect." *INS v. St. Cyr*, 533 U.S. 289, 326 (2001).

*Matter of R-R-C-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of R-R-C-*, ID# 14669 (AAO Oct. 21, 2015)