



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

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

MATTER OF M-A-F-

DATE: OCT. 27, 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, finding that the Petitioner is inadmissible to the United States and his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, had been denied.

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. 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 and 214.14(c)(2)(iv) require the filing of a Form I-192 waiver in conjunction with a Form I-918 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 and 214.14(c)(2)(iv).

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Haiti who originally entered the United States on September 3, 1984 as a lawful permanent resident. He was subsequently convicted of several offenses related to controlled substances. Based upon those convictions, the Petitioner was served with a Notice to Appear in removal proceedings on [REDACTED], 2006, when he applied for admission to the United States as a returning lawful permanent resident. On [REDACTED] 2009, the Petitioner was ordered removed from the United States and the Board of Immigration Appeals dismissed a subsequent appeal. The Petitioner filed the instant Form I-918 petition on June 24, 2013, with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification. The director subsequently issued a request for evidence (RFE) of the Petitioner's criminal records as well as evidence demonstrating that a Form I-192 waiver should be granted as a matter of discretion. Upon review of the evidence submitted, the director determined that the Petitioner did not warrant a favorable exercise of discretion and denied the Form I-192. As the Form I-192 was denied, the Petitioner was determined to be inadmissible to the United States and his Form I-918 petition was subsequently also denied. The Petitioner filed a timely appeal of the denial of his Form I-918.

We conduct appellate review on a *de novo* basis. On appeal, the Petitioner does not contest inadmissibility on the stated grounds but instead asserts that the director should favorably exercise discretion and approve the waiver. He submits further evidence in support of his assertions on appeal.

III. ANALYSIS

The director denied the Form I-192, finding that the Petitioner was inadmissible under sections 212(a)(2)(A)(i)(I) of the Act (crime involving moral turpitude), 212(a)(2)(A)(i)(II) of the Act (controlled substance offense), 212(a)(4)(A) of the Act (public charge), and 212(a)(7)(B)(i)(I) of the Act (a nonimmigrant without a valid passport). Our *de novo* review of the record does not support the Director's finding that the Petitioner is inadmissible under section 212(a)(4)(A) of the Act. The Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (March 7, 2013), provides that the public charge ground of inadmissibility under section 212(a)(4) of the Act does not apply to any alien who is petitioning for or has been granted U nonimmigrant status. Therefore, any alien seeking U nonimmigrant status will not have to submit a waiver application for this ground of inadmissibility.¹

Although the Petitioner is not inadmissible under section 212(a)(4)(A) 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) of the Act

¹ USCIS Policy Memorandum PM-602-0102, *Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions* 5 (June 15, 2014), http://www.uscis.gov/sites/default/files/USCIS/Outreach/Interim%20Guidance%20for%20Comment/PM-602-0102_TVPR_2013.pdf.

(crime involving moral turpitude), 212(a)(2)(A)(i)(II) of the Act (controlled substance offense), and 212(a)(7)(B)(i)(I) of the Act (a nonimmigrant without a valid passport).

On appeal, the Petitioner does not contest that he is inadmissible to the United States on the stated grounds but asserts that the seriousness of his crimes are mitigated by his rehabilitation, that it would be in the national or public interest to let him stay in the United States, and that he merits a favorable exercise of discretion such that his Form I-192 should be granted. The Petitioner admits that he was involved with drugs and committed drug-related crimes, but states that he regrets his past behavior. He claims that he has not been arrested in 14 years and has turned his life around and stayed away from the bad influences which led to his crimes. The Petitioner states that he has lived in the United States since 1984, and has no ties to Haiti. He indicates that he has serious health problems (congestive heart failure, coronary heart disease, diabetes) and would not be able to support himself or have access to health care in Haiti. He states that because of the humanitarian crisis in Haiti, Haitians are granted Temporary Protected Status and are allowed to remain in the United States.

The Petitioner asserts that his Form I-192 waiver application merits a favorable exercise of discretion. However, as noted, the Director denied the Petitioner's application for a waiver of inadmissibility, 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 M-A-F-*, ID# 14002 (AAO Oct. 27, 2015)