



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

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

MATTER OF S-M-

DATE: SEPT. 11, 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* section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 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 the Petitioner to inadmissible to the United States as her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, had been denied. The Petitioner appealed the denial of the Form I-918.

I. APPLICABLE LAW AND APPELLATE JURISDICTION

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

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 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 the Dominican Republic who last entered the United States on July 30, 2000. On December 5, 2002, the Petitioner was ordered removed from the United States.¹ The Petitioner filed the instant Form I-918 on April 12, 2012. The Director subsequently issued a request for evidence (RFE) for, among other evidence, a Form I-192 and a notice of intent to deny (NOID) for a final order for the Petitioner's removal from the United States. Upon review of the evidence submitted in response, 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 her Form I-918 petition was subsequently also denied. The Petitioner filed a timely appeal of the denial of her Form I-918 petition.

III. ANALYSIS

We conduct appellate review on a *de novo* basis.

The Director denied the Form I-192, finding that the Petitioner was inadmissible under section 212(a)(6)(E)(i) of the Act for alien smuggling. On appeal, the Petitioner does not contest that she is inadmissible to the United States on the stated ground but argues that the Director erroneously considered the waiver under section 212(d)(3) of the Act rather than section 212(d)(14) of the Act, which allows for waiver in the national or public interest. She further argues that she merits a favorable exercise of discretion such that her Forms I-192 and I-918 should be granted. 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 petitioner merited a favorable exercise of discretion under sections 212(d)(3) and 212(d)(14) of the Act and denied the Petitioner'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. 8 C.F.R. § 212.17(b)(3).

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 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The Petitioner has not established that she is admissible to the United States or that her ground of inadmissibility has been waived. She 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).

ORDER: The appeal is dismissed.

Cite as *Matter of S-M-*, ID#13431 (AAO Sept. 11, 2015)

¹ On July 27, 2011, the Petitioner's motion to reopen was denied and the Application for a Stay of Removal granted on July 6, 2011, was vacated.