



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

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

MATTER OF S-E-N-L-

DATE: SEPT. 24, 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 his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, to waive the grounds of inadmissibility was denied. On appeal, the Petitioner does not contest his inadmissibility on the stated grounds, and instead, claims that the decision was arbitrary and capricious as it did not contain an adequate explanation for the denial.

I. APPLICABLE LAW

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

...

(7) Documentation requirements.- . . .

(B) Nonimmigrants.-

(i) In general.-Any nonimmigrant who-

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period,

...

(9) ALIENS PREVIOUSLY REMOVED. -

(A) Certain aliens previously.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such

removal (or within 20 years 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)ALIENS UNLAWFULLY PRESENT.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who –

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States is inadmissible.

...

(C)Aliens unlawfully present after previous immigration violations.-

(i)In general. –Any alien who –

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Honduras who claims to have last entered the United States on December 27, 2001 without inspection, admission, or parole. The Petitioner filed a Form I-918 on June 18, 2013, indicating that he had been the victim of domestic violence. On the same day, the Petitioner filed a Form I-192. On December 2, 2013, 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 involving moral turpitude), 212(a)(6)(A)(i) (present without admission or parole), 212(a)(7)(B)(i)(I) (nonimmigrant without valid passport), 212(a)(9)(A)(i) (previously removed), 212(a)(9)(B)(i)(II) (unlawfully present one year or more), and 212(a)(9)(C)(i)(II) (previously ordered removed and entered without being admitted) 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 sections 212(a)(2)(A)(i)(I), 212(a)(6)(A)(i), 212(a)(7)(B)(i)(I), 212(a)(9)(A)(i), 212(a)(9)(B)(i)(II), and 212(a)(9)(C)(i)(II) of the Act, but states that the Director abused her discretion in failing to provide specific information about why the waiver was denied.

(b)(6)

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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 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 criminal trespass-private property on [REDACTED] 1994 in violation of Texas Penal Code § 30.05(d)(1); illegal re-entry after deportation on [REDACTED] 1995 in violation of 8 U.S.C. § 1326; criminal trespass-private property in violation of Tex. Pen. Code § 30.05; resisting arrest in violation of Tex. Pen. Code § 38.03 on [REDACTED] 1998; assault causing bodily injury – married in violation of Tex. Pen. Code § 22.01; and violation of a protective order under Tex. Pen. Code § 25.07 on [REDACTED]. 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. The Petitioner 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 sections 212(a)(6)(A)(i) (present without admission or parole), 212(a)(7)(B)(i)(I) (nonimmigrant without valid passport), 212(a)(9)(A)(i) (previously removed), 212(a)(9)(B)(i)(II) (unlawfully present one year or more), and 212(a)(9)(C)(i)(II) (previously ordered removed and entered without being admitted) of the Act. The Petitioner admits that he entered the United States in December 27, 2001 without admission, inspection or parole after having been removed on June 28, 2001. 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. Because the Petitioner was previously removed from the United States, he is inadmissible to the United States under section 212(a)(9)(A)(i) of the Act and, because he admits to having re-entered the United States without being admitted, the Petitioner is inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act. The Petitioner also admits to being present in the United States without admission since 2001 and, therefore, the Petitioner is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. In addition, the Petitioner has not submitted a valid, non-expired passport at any point before the Director or on appeal and, accordingly, is 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 abused her discretion in denying the Form I-192 by failing to provide a full explanation as to the grounds of the denial. We have no jurisdiction to review the discretionary portion of the denial of a Form I-192 submitted in connection with a Form I-918. 8 C.F.R. § 212.17(b)(3). The Petitioner 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).

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)(I) (conviction of a crime involving moral turpitude), 212(a)(6)(A)(i) (present without admission or parole), 212(a)(7)(B)(i)(I) (nonimmigrant without valid passport), 212(a)(9)(A)(i) (previously removed), 212(a)(9)(B)(i)(II) (unlawfully present one year or more), and 212(a)(9)(C)(i)(II) (previously ordered removed and entered without being admitted) 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 S-E-N-L-*, ID#14550 (AAO Sept. 24, 2015)