



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

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

MATTER OF O-R-R-

DATE: APR. 8, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) §§ 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner was not admissible to the United States, and thus was ineligible for U-1 classification.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that he is not inadmissible as a drug abuser or someone convicted of a crime of moral turpitude (CIMT), and thus discretion should be exercised in his favor.

Upon *de novo* review, we will dismiss the appeal.

I. APPLICABLE LAW

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, 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 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).

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, Application for Advance Permission to Enter as 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:

(1) Health Related Grounds

(A) In General – Any alien

....

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict,

is inadmissible.

....

(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

...

....

is inadmissible.

(ii) Exception - Clause (i)(I) shall not apply to an alien who committed only one crime if-

....

(II) the maximum penalty possible for the crime of which the alien was convicted . . . did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months

....

(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.

....

(9) Aliens Previously Removed

....

(B) Aliens Unlawfully Present

- (i) In General - Any alien . . . 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 –

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year

....

and who enters or attempts to reenter the United States without being admitted is inadmissible.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the

(b)(6)

Matter of O-R-R-

credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. §214.14(c)(4).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States without inspection, admission, or parole.¹ The Petitioner filed the instant Form I-918 and Form I-192, and the Director subsequently issued two requests for evidence (RFE) relating, in part, to the Petitioner's criminal history and the applicable grounds of inadmissibility. The Director also requested evidence to demonstrate that USCIS should exercise discretion in the Petitioner's favor to approve his Form I-192. In response, the Petitioner submitted additional evidence, which the Director found insufficient to show that the Petitioner was admissible and that he merited a favorable exercise of discretion. As the Petitioner was found inadmissible and his Form I-192 had been denied, the Director consequently denied the Form I-918. The Petitioner filed a timely appeal.

The record shows that the [REDACTED] Iowa District Court entered a deferred judgment against the Petitioner, pursuant to his guilty plea, for the offense of domestic abuse assault, a simple misdemeanor. Iowa Code § 708.2A(2)(A) (2014). The court ordered informal probation for 12 months, participation in a 24 week batterer's education program, and payment of restitution to the victim. The court subsequently ordered the judgment expunged.²

III. ANALYSIS

The Director found the Petitioner inadmissible under the following sections of the Act: Section 212(a)(1)(A)(iv) (drug abuser), 212(a)(2)(A)(i)(I) (CIMT), 212(a)(6)(A)(i) (present without permission or parole), and 212(a)(9)(B)(i)(II) (unlawfully present and seeks readmission within 10 years). On appeal, the Petitioner states in his brief, and we concur, that he is also inadmissible under 212(a)(9)(C)(i)(I) (unlawfully present and reenters without admission).

A. Drug Abuser

The Petitioner indicated on the Form I-192 that he may be inadmissible as a drug abuser, and the Director found him inadmissible under section 212(a)(1)(A)(iv) of the Act. On appeal, the Petitioner contests the Director's finding that he is inadmissible as a drug abuser. The Petitioner submits Form I-693, Report of Medical Examination and Vaccination Record, certified by a civil surgeon on November 13, 2014,³ which indicates that the Petitioner "used marihuana and cocaine once in 2003,

¹ The record reflects that the Petitioner re-entered the United States after complying with an order for voluntary departure in removal proceedings.

² An alien remains convicted for immigration purposes notwithstanding a subsequent state action to erase the original determination of guilt. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

³ The Petitioner untimely submitted the Form I-693 below in response to the Director's RFE, but as it was untimely, the Director did not consider it.

(b)(6)

Matter of O-R-R-

not any more,” and that the Petitioner’s drug abuse is “in full remission.” The Petitioner submits partially translated notes from the [REDACTED] in Mexico indicating negative results of urine and blood testing for cocaine, marijuana and amphetamines on May 7, June 27, and August 12, 2008, and January 2009, and an appointment booklet from [REDACTED] Mexico,⁴ indicating that he received services from January through August of an unknown year. The notes also include the handwritten words “termino tratamiento” after the August entry. He also submits a Substance Use Assessment from [REDACTED] Substance Abuse Counselor, Employee & Family Resources, who states that the Petitioner told him that he used cocaine once and marijuana twice in 2003, during a previous stay in the United States, and that he participated in some type of substance abuse program in 2008 as part of an attempt to get a visa. [REDACTED] indicates that the Petitioner reported “[n]o other substance use history.” [REDACTED] concludes that, “[b]ased on [the Petitioner’s] reports of his current and past levels of substance use, he does not meet criteria for substance abuse treatment referral.”

Based on a full review of the record as supplemented on appeal, the Petitioner has overcome the Director’s conclusion that he is a drug abuser. Accordingly, we withdraw the Director’s determination that the Petitioner is inadmissible as a drug abuser under section 212(a)(1)(A)(iv) of the Act.

B. Crime of Moral Turpitude

The Director also concluded that the Petitioner’s conviction for domestic abuse assault was a CIMT and as such, the Petitioner was inadmissible. The Petitioner asserts on appeal that his conviction under Iowa Code section 708.2A(2)(A) is not categorically a CIMT, as it punishes, in part, offensive touching, conduct that does not involve moral turpitude. In general, simple domestic assault not involving injury, such as the statute of conviction in this case, is not a CIMT. *See Matter of Sanudo*, 23 I&N Dec. 968, 970-72 (BIA 2006). Further, section 212(a)(2)(A)(ii)(II) of the Act excludes from the definition of a CIMT any alien convicted of a crime for which the maximum term of imprisonment did not exceed one year and the alien was not sentenced to a term of imprisonment exceeding six months. 8 U.S.C. § 1182(a)(2)(A)(ii)(II).⁵ In this case, the petitioner’s CIMT meets the petty offense exception because the maximum sentence to confinement for a simple misdemeanor offense is 30 days, Iowa Code § 903.1(1) (2014), the Petitioner was not sentenced to a term of imprisonment exceeding six months, and he was convicted of a single crime of moral turpitude. Accordingly, even if the conviction were a CIMT, the Petitioner would qualify for the petty offense exception set forth in the Act. The Petitioner is not inadmissible for committing a CIMT under section 212(a)(2)(A)(i)(I), and we withdraw the Director’s finding to the contrary.

⁴ The website for the organization indicates that it is a non-profit corporation assisting juveniles with drug addiction. [REDACTED] (accessed February 29, 2016).

⁵ This provision is commonly referred to as the petty offense exception. In order to be eligible for the exception, the alien may not have been convicted of a prior CIMT.

C. Immigration Violations

On appeal, the Petitioner does not contest that he is inadmissible on grounds that he violated the immigration laws found at sections 212(a)(6)(A)(i), 212(a)(9)(B)(i)(II), and 212(a)(9)(C)(i)(I) of the Act. He asserts that the Director's decision denying his Form I-192 was arbitrary and that he merits a favorable exercise of discretion such that the Form I-192 and Form I-918 should be granted. However, 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).

IV. CONCLUSION

Although the Petitioner has established that he is not inadmissible as a drug abuser and as a person who has been convicted of a CIMT, he remains inadmissible under sections 212(a)(6)(A)(i), 212(a)(9)(B)(i)(II), and 212(a)(9)(C)(i)(I) of the Act, and accordingly, his Form I-918 cannot be approved. We have no jurisdiction to review the Director's denial of the Form I-192.⁶

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). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of O-R-R-*, ID# 16174 (AAO Apr. 8, 2016)

⁶ This decision is without prejudice to the Petitioner's filing a new Form I-192.