



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

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

MATTER OF A-E-N-A-

DATE: FEB. 8, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918 SUPPLEMENT A, PETITION FOR QUALIFYING FAMILY MEMBER OF U-1 RECIPIENT

The Petitioner seeks nonimmigrant classification of the Derivative as a qualifying family member of a U-1 nonimmigrant. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U)(ii), 8 U.S.C. § 1101(a)(15)(U)(ii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

**I. APPLICABLE LAW AND APPELLATE JURISDICTION**

Section 101(a)(15)(U)(ii) of the Act provides for derivative U nonimmigrant classification to qualifying family members of victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. *See also* 8 C.F.R. § 214.14(f)(1) (“An alien who has petitioned for or has been granted U-1 nonimmigrant status (*i.e.*, principal alien) may petition for the admission of a qualifying family member . . . if accompanying or following to join such principal alien”).

Pursuant to the regulation at 8 C.F.R. § 214.14(f)(1)(ii), the qualifying family member must be admissible to the United States. 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 Supplement A, Petition for Qualifying Family Member of U-1 Recipient, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. All 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).

For qualifying family members who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17 and 214.14(f)(3)(ii) require the filing of a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, in conjunction with a Form I-918 Supplement A 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 before us is whether the Director was correct in finding the Derivative to be inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17 and 214.14(f)(3)(ii).

Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent part, at Section 212(a)(2)(A)(i)(I), that any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, is inadmissible.

Section 212(a)(6)(A)(i) of the Act states, in pertinent part, that 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.

Section 212(a)(7)(B)(i) of the Act states, in pertinent part, that 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, is inadmissible.

## II. FACTS AND PROCEDURAL HISTORY

The Petitioner filed the instant Form I-918 Supplement A on behalf on the Derivative on April 1, 2014. The Derivative is the mother of the Petitioner. The Derivative is a citizen of El Salvador who is present in the United States without inspection, admission, or parole. On October 6, 2014, the Derivative filed the Form I-192.

On April 14, 2015, the Director denied the Form I-918 Supplement A and the Derivative's Form I-192, determining that the Derivative is inadmissible to the United States under the following sections of the Act: section 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude), section 212(a)(6)(A)(i) (entry without inspection), and section 212(a)(7)(B)(i)(I) (not in possession of a valid passport), and that she did not merit a positive exercise of discretion.

## 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 Derivative inadmissible to the United States, thus requiring an approved Form I-192. On appeal, the Petitioner does not contest the grounds of the Derivative's inadmissibility found by the Director. She argues, rather, that the Director did not properly balance the positive and negative factors of the Derivative's Form I-192 in assessing whether or not to grant the waiver as a matter of discretion. The Petitioner highlights the Derivative's good qualities, the length of time since the crimes were committed, and the harm that denial of the Form I-918 will have on their family.

The Petitioner requests that we review whether the Director properly considered the Form I-192 under sections 212(d)(3) and (14) of the Act, which allows for a waiver of inadmissibility in the national or public interest. 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 Derivative merited a favorable exercise of discretion under sections 212(d)(3) and 212(d)(14) of the Act, and denied the Derivative's Form I-192 after having made a substantive decision on the merits of the Form I-192. The Petitioner concedes the Derivative is inadmissible under the grounds identified by the Director, 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 the Derivative is admissible to the United States or that the grounds of inadmissibility have been waived. The Derivative 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; *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 A-E-N-A-*, ID# 15341 (AAO Feb. 8, 2016)