



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

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

MATTER OF E-I-R-A-

DATE: FEB. 19, 2016

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. Upon motion, the Director reopened the proceedings and again denied the petition. The matter is now before us on appeal.<sup>1</sup> The appeal will be dismissed.

**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, 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).

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<sup>1</sup> The Petitioner mistakenly indicated on the Form I-290B, Notice of Appeal or Motion, that she was filing both an appeal and a motion. The Director declined to treat the matter as a motion and forwarded the matter to us to consider as an appeal.

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—

....

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance . . .

is inadmissible.

....

(C) Controlled substance traffickers. Any alien who the consular officer or the Attorney General knows or has reason to believe--

- (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 802 of Title 21), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so . . .

is inadmissible.

....

(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

(A) Certain aliens previously removed

....

(ii) Other aliens. Any alien not described in clause (i)<sup>2</sup> who—

(I) has been ordered removed under section 1229a of this title or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date 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 –

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

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<sup>2</sup> Clause (i) refers to arriving aliens.

(b)(6)

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....

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 Mexico who claims to have first entered the United States on July 27, 1991. The record reflects that the Petitioner was placed in removal proceedings on [REDACTED] 2005, was ordered removed from the United States, and was removed from the United States to Mexico on [REDACTED] 2005. She claims to have subsequently reentered the United States on July 24, 2005, without inspection, admission or parole. On October 24, 2012, the Petitioner filed the instant Forms I-918 and I-192. On October 7, 2013, the Director issued a request for evidence (RFE) seeking information relating 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 her Form I-192. The Director initially denied the Form I-918 as abandoned. On motion, the Petitioner submitted additional evidence, and the Director reopened the proceedings. The Director found the additional evidence insufficient to show that the Petitioner was admissible or that she merited a favorable exercise of discretion. As the Petitioner was found inadmissible and the Form I-192 was denied, the Director denied the Form I-918. The Petitioner filed a timely appeal and submits a brief and a statement.

The record shows that the Petitioner has the following criminal history:

- On [REDACTED] 2005, the Petitioner was arrested and charged with possession of a controlled substance, a felony, under V.A.M.S. 195.202 (2005), in [REDACTED] Missouri.<sup>3</sup> The charges against the Petitioner were dismissed on [REDACTED] 2005.
- On [REDACTED] 2008, the Petitioner was convicted of larceny (\$50 - \$199) in [REDACTED] Missouri. The record does not contain court disposition documents relating to this offense.
- On [REDACTED] 2008, the Petitioner was arrested and charged with driving under the influence (DUI) under [REDACTED] Code § 30(a)(3) (2008), [REDACTED] Kansas, a Class B nonperson misdemeanor.<sup>4</sup> On [REDACTED] 2009, she was convicted of DUI, pursuant to her guilty plea,

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<sup>3</sup> A police report indicated that 213 grams of methamphetamine was found at the residence, and the trunk of the vehicle parked in the driveway of the residence contained 33 grams of marijuana.

<sup>4</sup> This section was deleted and is now codified at [REDACTED] Code Section 3-8-A-14 (2015).

(b)(6)

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and was ordered to serve 90 days in jail (88 days paroled), 12 months of probation, complete an evaluation, and pay fines, costs and fees.<sup>5</sup>

- On [REDACTED] 2010, the Petitioner was arrested and charged with DUI in [REDACTED] Kansas. On [REDACTED] 2011, the Petitioner was convicted, pursuant to her guilty plea, of violating K.S.A. § 8.1567(e) (2010), second conviction DUI, a Class A nonperson misdemeanor, and was sentenced to 365 days with 12 months of probation (two days in WIP followed by three days of house arrest), and to pay fines, costs and fees.

### III. ANALYSIS

We conduct appellate review on a *de novo* basis. A full review of the record supports the Director's determination that the Petitioner is inadmissible.

The Director found the Petitioner inadmissible under the following sections of the Act: 212(a)(2)(A)(i)(II) (controlled substance violation), 212(a)(2)(C) (drug trafficker), 212(a)(6)(A)(i) (present without permission or parole), 212(a)(9)(A)(ii) (alien present after previously removed), 212(a)(9)(B)(i)(II) (unlawfully present in the United States for one year or more), and 212(a)(9)(C)(i)(I) (unlawfully present after departing the United States).

We disagree with the Director's determination that the Petitioner is inadmissible as a controlled substance violator under section 212(a)(2)(A)(i)(II) of the Act, or a drug trafficker under section 212(a)(2)(C) of the Act. The Petitioner has not been convicted of a controlled substance violation, and is thus not inadmissible under section 212(a)(2)(A)(i)(II) of the Act. Further, the Director's finding that there is sufficient reason to believe that the Petitioner is involved in drug trafficking is without support in the record. While the record contains an arrest report indicating that the Petitioner was arrested at a residence containing large quantities of methamphetamine and marijuana, the record does not contain any indication that she resided at the premises, that she knew or had reason to know that such drugs were on the premises, and/or that she was aiding and abetting in the sale of the drugs. The Director's determination that there was reason to believe that the Petitioner was participating in drug trafficking was not based on reasonable, substantial, and probative evidence. *See Matter of Rico*, 16 I. & N. Dec. 181, 186-87 (BIA 1977); *Alarcon-Serrano v. INS*, 220 F.3d 1116, 1119 (9th Cir. 2000). We accordingly withdraw the portions of the Director's decision finding the Petitioner inadmissible as a controlled substance violator under section 212(a)(2)(A)(i)(II), or a drug trafficker under section 212(a)(2)(C).

The Petitioner does not contest the Director's determination that she is inadmissible under sections 212(a)(6)(A)(i) (present without permission or parole), 212(a)(9)(A)(ii) (alien present after previously removed), 212(a)(9)(B)(i)(II) (unlawfully present in the United States for one year or more), and 212(a)(9)(C)(i)(I) (unlawfully present after departing the United States). The Petitioner asserts, rather, that the Director should have favorably exercised discretion and approved the Form

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<sup>5</sup> On [REDACTED] 2009, the Petitioner was ordered to serve her sentence after her probation was revoked.

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I-192. As the Petitioner is inadmissible, we have no jurisdiction to review the Director's denial of the Form I-192. *See* 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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Although the Petitioner has met the statutory eligibility requirements for U nonimmigrant classification, she has not established that she is admissible to the United States or that her grounds of inadmissibility under §§ 212(a)(6)(A)(i), 212(a)(9)(A)(ii), 212(a)(9)(B)(i)(II) and 212(a)(9)(C)(i)(I) have 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 E-I-R-A-*, ID# 15524 (AAO Feb. 19, 2016)