



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

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

MATTER OF C-H-M-

DATE: FEB. 19, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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 and we dismissed the Petitioner's subsequent appeal. The matter is now before us again on a motion to reopen and reconsider. The motion will be denied.

#### I. APPLICABLE LAW

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, 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 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, 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).

#### II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who claims to have last entered the United States in April 1989, without admission, inspection or parole. The Petitioner filed the instant Form I-918 on September 25, 2012, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification, and a Form I-192. The Director denied the Form I-192, finding that the Petitioner was inadmissible

under section 212(a)(2)(A)(i)(I) of the Act (crime involving moral turpitude) and section 212(a)(6)(A)(i) (present without admission or parole) of the Act. After reviewing the evidence submitted in support of the waiver application, the Director denied the Form I-192, concluding that the Petitioner had not shown that he warranted a favorable exercise of discretion. As the Petitioner was found inadmissible and his Form I-192 was denied, the Director consequently denied the Petitioner's Form I-918. The Petitioner filed a timely appeal. On appeal, we withdrew the Director's finding of the Petitioner's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude,<sup>1</sup> but ultimately dismissed the appeal because the Petitioner remained inadmissible under section 212(a)(6)(A)(i) of the Act and we had no jurisdiction to review the denial of the Petitioner's Form I-192. The Petitioner has now filed a timely motion to reopen and reconsider and submits a brief.

### III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, as supplemented on motion, the Petitioner has not overcome the ground for denial.

A motion that does not meet the applicable requirements shall be denied. 8 C.F.R. § 103.5(a)(4). A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The motion will be denied for the following reasons.

On motion, the Petitioner does not dispute that he is inadmissible to the United States under section 212(a)(6)(A)(i) of the Act but rather requests a remand to the Director for reconsideration of his Form I-192. The Petitioner asserts that the Director's decision on the waiver application was based on factual error which has since been corrected. Specifically, the Petitioner contends that the Director relied on a conviction record which indicated in error that he had been sentenced to a 36 month term of imprisonment for his conviction for willful infliction of corporal injury on a spouse/cohabitant in violation of Cal. Penal Code § 273.5(a), when in fact, the Petitioner had been sentenced to 36 months of probation. As noted, 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, as the Petitioner has not established that he is admissible to the United States or that his grounds of inadmissibility have been waived, he is 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). Nothing in our decision, however, forecloses the Petitioner's filing of a new Form I-192.

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<sup>1</sup> The Petitioner was convicted of a crime that may be considered a crime involving moral turpitude but he qualifies for the petty offense exception described at section 212(a)(2)(A)(ii) of the Act.

#### IV. CONCLUSION

In these 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. at 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of C-H-M-*, ID# 15528 (AAO Feb. 19, 2016)