



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

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

MATTER OF E-M-C-

DATE: JAN. 15, 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. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

Section 101(a)(15)(U)(i) of the Act provides for U nonimmigrant classification to foreign national 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 is admissible to the United States or that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i).

An inadmissible foreign national who seeks U nonimmigrant status must file a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, in conjunction with a Form I-918, in order to waive any ground of inadmissibility. 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv). 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." Therefore, we do not have jurisdiction to review whether the Director properly denied the Form I-192. We can only determine whether the Director was correct in finding the Petitioner inadmissible to the United States and requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) in order to be granted U nonimmigrant status.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a native and citizen of Mexico, claims to have last entered the United States in 1990 without inspection, admission, or parole. He filed the Form I-918 on April 22, 2013. On the same date, he filed a Form I-192. The Director denied the Form I-192 in a decision dated May 19, 2014, finding that the Petitioner was inadmissible under sections 212(a)(2)(A)(i)(II) (controlled substance violation), 212(a)(6)(A)(i) (present without admission or parole), 212(a)(6)(C)(i) (fraud or willful

misrepresentation), 212(a)(7)(B)(i)(I) (nonimmigrant without valid passport), and 212(a)(2)(C)(i) (controlled substance trafficker) of the Act. After reviewing the evidence, the Director found that the Petitioner had not demonstrated that he warranted a favorable exercise of discretion and denied the Form I-192.

The Petitioner filed a new Form I-192 on June 20, 2014. The Director denied that application in a decision dated April 2, 2015, finding, in addition to the previously listed grounds of inadmissibility, that the Petitioner was also inadmissible under section 212(a)(2)(A)(i)(I) of the Act (conviction or commission of a crime involving moral turpitude).

In a decision dated May 19, 2014, the Director denied the Form I-918 because the Petitioner was inadmissible to the United States and his Form I-192 was denied. On June 20, 2014, the Petitioner filed a motion to reopen and reconsider the Director's decision. The Director granted the motion but affirmed the denial of the Form I-918 in a decision dated April 2, 2015. The Director also concluded that the Petitioner was not credible. On appeal, the Petitioner does not contest his inadmissibility on the grounds stated in the Director's decisions. Instead, he submits a brief and additional evidence to support his assertion that he is credible.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. On appeal, the Petitioner does not dispute that he is inadmissible to the United States on the grounds cited in the Director's decisions on the Form I-192. Instead, he asserts that he is credible and offers explanations for the issues the Director discussed in the April 2, 2015, denial of the Form I-918 relating to the Petitioner's credibility. Additionally, the Petitioner contends that the Director may have not considered some of the evidence he submitted prior to the April 2, 2015, denial of the Form I-918 and he resubmits that evidence on appeal. He states that the Director should have afforded full evidentiary weight to the Petitioner's statements, rather than discrediting them for small discrepancies, and that his Form I-918 should be approved. He indicates on appeal that, if his Form I-918 is approved, he will file a new Form I-192 waiver application.

The Petitioner is requesting us to approve the Form I-918 on appeal, without regard to the Director's denial of the Form I-192. However, eligibility for classification as a U nonimmigrant requires a petitioner to demonstrate both that he meets the eligibility criteria at section 101(a)(15)(U)(i) of the Act and that he is admissible to the United States or merits a waiver of his inadmissibility as a matter of discretion. *See* Section 212(d)(14) of the Act. Because an approved Form I-918 means that both the statutory eligible criteria have been met and a petitioner is admissible or any inadmissibility grounds were waived, we cannot approve the Petitioner's Form I-918 where the Director has denied the Form I-192. The denial of the Petitioner's Form I-918 is based on the denial of his Form I-192 and we have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918. 8 C.F.R. § 212.17(b)(3).

In the most recent decision regarding the Form I-918, dated April 2, 2015, the Director discussed the Petitioner's motion to reopen and reconsider, in which the Petitioner alleged that his Form I-192 should be approved as a matter of discretion. In that decision, although the Director discussed the Petitioner's credibility relating to statements submitted with the Form I-918, the Director also explained that the credibility finding was only one factor in the decision to deny the Petitioner's Form I-192. The specific credibility issues addressed by the Petitioner in his brief on appeal concern whether the Petitioner was a victim of qualifying criminal activity in the United States, Mexico or both, his age when the victimization occurred and at the time that he entered the United States, and whether the alleged perpetrator of the qualifying criminal activity is in Mexico or the United States and if the Petitioner had any contact with the perpetrator since the perpetrator left Mexico.

In his brief on appeal, the Petitioner provides explanations that address these specific credibility issues. While we are sensitive to the concerns raised by the Petitioner on appeal with respect to these credibility issues, they are not relevant to our review on appeal because, regardless of the Petitioner's credibility regarding matters pertinent to the Form I-918, the Petitioner must also establish his admissibility to the United States or show that any grounds of inadmissibility have been waived. The Petitioner does not contest on appeal his inadmissibility under sections 212(a)(2)(A)(i)(I) (conviction or commission of a crime involving moral turpitude), 212(a)(2)(A)(i)(II) (controlled substance violation), 212(a)(2)(C)(i) (controlled substance trafficker), 212(a)(6)(A)(i) (present without admission or parole), 212(a)(6)(C)(i) (fraud or willful misrepresentation), and 212(a)(7)(B)(i)(I) (nonimmigrant without valid passport) of the Act. In addition, the Director also explained that the credibility finding was only one factor in the April 2, 2015, decision to deny the Petitioner's Form I-192. Consequently, as the Petitioner does not contest his inadmissibility under the pertinent sections of the Act and we do not have jurisdiction to review the Director's Form I-192 decision, the Petitioner's Form I-918 must remain denied.

IV. CONCLUSION

As in all visa petition proceedings, the Petitioner bears the burden of proving eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of E-M-C-*, ID# 15496 (AAO Jan. 15, 2016)