



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

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

MATTER OF A-O-L-

DATE: JUNE 21, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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) sections 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 inadmissible to the United States and his request for a waiver had been denied. The Petitioner filed two subsequent motions that the Director denied as untimely. The Petitioner appealed the Director's denial of his second motion, and claimed that the unique circumstances of his case merited approval of the visa. We concluded that the Petitioner did not contest the Director's finding that he was inadmissible, and summarily dismissed the appeal. We denied as untimely the Petitioner's motion to reopen and reconsider our decision.

The matter is now before us on a second motion to reopen and a motion to reconsider. The Petitioner claims that he has additional evidence to show that he was the victim of a racially motivated assault by a law enforcement officer, and that his U visa should be approved. The Petitioner does not contest the Director's finding that he is inadmissible.

Upon review, we will deny the motions.

I. APPLICABLE LAW

For persons 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 the Form I-918, Petition for U Nonimmigrant Status (U petition), in order to waive any applicable ground(s) 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 such, we do not have jurisdiction to review whether the Director properly denied the Form I-192, and thus do not consider whether the Petitioner does or does not merit a waiver. We do have jurisdiction, however, to consider whether the Director was correct in finding the Petitioner inadmissible to the United States in the first instance and, therefore, whether a waiver was required in the first instance.

(b)(6)

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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 United States Citizenship and Immigration Services (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 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; however, we determine, in our sole discretion, the 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 citizen of Nigeria. [REDACTED] New Jersey Superior Court convicted the Petitioner: (1) in [REDACTED] 2003, of two counts of endangering the welfare of a child in violation of New Jersey Statutes Annotated section 2C: 24-4A, and sentenced him to three years' probation, registration as a sex offender, and other conditions; and (2) in [REDACTED] 2006, of failure to register as a sex offender under N.J. Stat. Ann. section 2C: 7-2A, and sentenced him to one year probation, payment of fines, and other conditions. The Petitioner filed this U petition on July 20, 2011, seeking U-1 status as a victim of a felonious assault.

III. ANALYSIS

The Petitioner has not asserted new facts to be proved in the reopened proceeding, as required by the regulation at 8 C.F.R. § 103.5(a)(2). The Petitioner does not cite binding precedent decisions or other legal authority establishing that we incorrectly applied the pertinent law or agency policy, nor does he show that our prior decision was erroneous based on the evidence of record at the time, as required by the regulation at 8 C.F.R. § 103.5(a)(3). Consequently, the motion to reopen and reconsider must be denied. *See* 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied).

The Director determined that the Petitioner is ineligible for U-1 status because he is inadmissible to the United States, due, in part, to his conviction of a crime involving moral turpitude, and did not find that the Petitioner merited a favorable exercise of her discretion to waive the grounds of inadmissibility. We dismissed the Petitioner's appeal, as he did not address the Director's reasons for denial or contest his inadmissibility.

On motion, the Petitioner does not contest that he is inadmissible. Our review of the record, as supplemented on motion, is limited to whether or not the Petitioner is inadmissible and therefore requires a waiver of his grounds of inadmissibility before he can be granted U-1 nonimmigrant status. The Petitioner's statement on motion relates only to his claim that he was subject to police brutality; does not relate to his admissibility; and is not before us on appeal. The Petitioner has not

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presented any arguments or evidence that the Director erred in finding him inadmissible to the United States and therefore requiring an approved waiver. As we have no jurisdiction to consider the Director's decision on the Form I-192, we must dismiss the appeal.

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, 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 motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of A-O-L-*, ID# 16886 (AAO June 21, 2016)