



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

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

MATTER OF J-A-C-A-

DATE: MAY 3, 2016

APPEAL OF VERMONT SERVICE CENTER 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 Form I-918, Petition for U Nonimmigrant Status. The Director concluded that the Petitioner had not demonstrated that he had been helpful, was being helpful, or was likely to be helpful in the investigation or prosecution of a qualifying criminal activity. The Director also determined that the Petitioner was inadmissible to the United States because his Form I-192, Application for Advance Permission to Enter as Nonimmigrant, had been denied.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims he was helpful to the investigation or prosecution of the cited criminal activity. The Petitioner does not dispute that he is inadmissible to the United States on the grounds cited in the Director’s decision and on the Form I-192.

Upon *de novo* review, we will dismiss the appeal.

I. APPLICABLE LAW

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 and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

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An inadmissible petitioner who seeks U nonimmigrant status must file a Form I-192 in conjunction with a Form I-918 in order to waive any ground of inadmissibility. *See* 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, “[t]here is no appeal of a decision to deny a waiver.” Therefore, on appeal, 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.

Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates [that] . . . :

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested . . . ;

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 in our *de novo* review; 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, a native and citizen of El Salvador, claims to have last entered the United States without inspection, admission, or parole. He filed the Form I-918 with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, and with a Form I-192. The Form I-918 Supplement B was signed by [REDACTED] (certifying official), the record administrator for the

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██████████ Police Department of the state of Washington. The certifying official checked the boxes at Part 4 to indicate that the Petitioner had been helpful, and wrote that it “would be fair to say” that the Petitioner “did not refuse any request for further cooperation” because the police department had “consented to [the Petitioner’s] stated preference” not to press charges, and the police “did not request that he press charges or do anything further.”

The Director denied the Form I-192, finding that the Petitioner was inadmissible under sections 212(a)(1)(A)(iii) (health-related ground), 212(a)(6)(A)(i) (present without admission or parole), and 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport) of the Act and had not demonstrated that he warranted a favorable exercise of discretion. The Director also found that the Form I-918 was not approvable because the Petitioner had not established his continued helpfulness to the investigation or prosecution of qualifying criminal activity and because he was inadmissible to the United States as his Form I-192 had been denied.

III. ANALYSIS

A. Helpfulness in the Investigation or Prosecution of the Qualifying Criminal Activity

With respect to the Director’s determination that the Petitioner did not establish his helpfulness in the investigation or prosecution of the assault committed against him, the Petitioner asserts he did not refuse to help law enforcement but instead indicated to the arriving police officer that his “preference” was not to file charges. Accordingly, the Petitioner suggests that, having expressed his preference to the police, it was their decision not to press him further or to independently seek to investigate the crime of which the Petitioner was the victim. The evidence provided by the Petitioner does not support his assertion that he fully cooperated with the police aside from his stated “preference” not to file charges. The police officer interviewed the Petitioner immediately after the assault, and the police report shows that the Petitioner advised the officer that he had come to the hotel to “meet up with two female friends and hang out,” but was instead assaulted “by two male friends of the females.” However, on appeal the Petitioner provides a mental health evaluation reflecting that he told the evaluator that he had gone to the hotel to pick up a female co-worker who had asked him for a ride and that when he arrived at the hotel “a woman asked him to come into the room,” after which he was assaulted by two men. Based on these contradictory assertions, it is unclear whether the Petitioner went to a hotel to pick up a co-worker and entered the hotel room because an unknown woman invited him in, or whether he went to the hotel to hang out with two female friends. Neither of the conflicting documents lists the identities of his claimed co-worker, the woman who allegedly invited him into the hotel room once he arrived, or the identities of the two female friends whom he initially advised the police he intended to hang out with at the hotel. Accordingly, even if, as the Petitioner suggests, he believed that the police could have independently investigated and pressed charges after he expressed a “preference” not to do so, the Petitioner has not shown that he accurately and consistently described the circumstances of his assault to the police in such a way that he otherwise can be considered to have been helpful to them in the investigation of the criminal activity.

The regulation at 8 C.F.R. § 214.14(c)(4) provides USCIS with the authority to determine, in its sole discretion, the evidentiary value of evidence, including a Form I-918 Supplement B. Although the Petitioner has provided a certified Form I-918 Supplement B, based on the incomplete and contradictory information that he has provided to the police and on appeal it does not meet the requirements under section 214(p)(1) of the Act and, therefore, the Petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act, as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3).

B. Inadmissibility and Form I-192 Denial

On appeal, the Petitioner does not dispute that he is inadmissible to the United States on the grounds cited in the Director's Forms I-918 and I-192 decisions, but states that an Immigration Judge may separately choose to approve the Petitioner's waiver of inadmissibility within the context of the Petitioner's pending removal proceedings. The Petitioner appears to be conceding that he is inadmissible under the grounds enumerated by the Director but asks that we expedite adjudication of his appeal based on the remainder of the Director's determination. The Petitioner asserts that pursuant to the decision in *L.D.G. v. Holder*, the Immigration Judge has jurisdiction to adjudicate waiver applications pursuant to section 212(d)(3) of the Act for petitioners seeking U nonimmigrant status. *See L.D.G. v. Holder*, 744 F.3d 1022 (7th Cir. 2014).

In *L.D.G.*, the U.S. Court of Appeals for the Seventh Circuit (Seventh Circuit) determined that the U.S. Department of Justice, acting through Immigration Judges and the Board of Immigration Appeals, has concurrent jurisdiction with the Department of Homeland Security, of which USCIS is a component, to waive statutory grounds of inadmissibility for a petitioner under section 212(d)(3) of the Act, 8 U.S.C. § 1182(d)(3)(A). *L.D.G.* at 1031. The Seventh Circuit's decision in *L.D.G.* discusses only the U.S. Department of Justice's concurrent jurisdiction to adjudicate a waiver of inadmissibility but does not make any ruling with respect to the Department of Homeland Security's adjudication of waivers, nor does it directly address the portion of the regulation at 8 C.F.R. § 212.17(b)(3) that is at issue here. The regulation at 8 C.F.R. § 212.17(b)(3) states, "[t]here is no appeal of a decision to deny a waiver." The decision in *L.D.G.* does not compel USCIS to deviate from the plain language of 8 C.F.R. § 212.17(b)(3) in its own adjudications and, on that basis, we do not have jurisdiction to review whether the Director properly denied the Form I-192. In addition, the holding in *L.D.G.* is not precedential outside of the Seventh Circuit and is not directly applicable to the Petitioner, who resides in the Ninth Circuit.

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 eligibility criteria have been met and that a petitioner is either 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 in part 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). Because

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the Petitioner is inadmissible under sections 212(a)(1)(A)(iii), 212(a)(6)(A)(i), and 212(a)(7)(B)(i)(I) of the Act, and because the Form I-192 is denied, the Form I-918 may not be approved.

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 J-A-C-A-*, ID# 16175 (AAO May 3, 2016)