



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

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

MATTER OF C-A-G-

DATE: NOV. 18, 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 (U petition). The Director concluded that the U petition was not approvable because the record established the Petitioner's inadmissibility and the Petitioner's Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), requesting a waiver of the grounds of inadmissibility, had been denied.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief with additional evidence and asserts that the Director erred in denying his application as a matter of discretion and public interest.

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

#### I. APPLICABLE LAW

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 U petition and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. A 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 waiver application in conjunction with the U petition in order to waive any ground of inadmissibility. 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." Although the regulations do not provide for appellate review of the Director's discretionary denial of a waiver application, we may, however, consider whether the Director's underlying determination of inadmissibility was correct.

(b)(6)

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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 –

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . .[.]

is inadmissible.

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, 376 (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 is a native and citizen of El Salvador whom the record of proceeding reflects entered the United States on or about April 1, 1992, without inspection, admission, or parole. On [REDACTED] 2003, the Petitioner was convicted of second-degree robbery under California Penal Code section 211 and sentenced to 364 days imprisonment. On [REDACTED] 2003, the Petitioner was issued a Notice to Appear before an Immigration Judge, placing him in removal proceedings. On [REDACTED] 2003, the Petitioner was ordered removed from the United States and on [REDACTED] 2003, was removed to El Salvador, but then illegally reentered the United States. On [REDACTED] 2014, the Petitioner was apprehended by U.S. Immigration and Customs Enforcement agents and served a Form I-871, Notice of Intent/Decision to Reinstate Prior Order.<sup>1</sup> Following an interview with an asylum officer who determined that the Petitioner had established a reasonable fear of persecution or torture upon return to El Salvador, the Petitioner was issued a Form I-863, Notice of Referral to Immigration Judge. The Petitioner was denied withholding of removal on [REDACTED] 2014.

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<sup>1</sup> The Form I-871 indicates that the Petitioner reentered the United States in December 2010. However, in statements and affidavits, the Petitioner indicated that he returned to the United States in August or September 2003, and other evidence in the record of proceedings shows that in 2008 he was sentenced in the United States for a probation violation.

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The record of proceedings indicates that on [REDACTED] 2011, the Petitioner was the victim of robbery. Based on his victimization, the Petitioner filed a U petition and a waiver application claiming to be the victim of a felonious assault. The Director subsequently issued a request for evidence (RFE) with respect to the waiver application for documentation related to his criminal history and evidence to demonstrate that USCIS should exercise discretion to approve the application. The Petitioner responded to the RFE with additional evidence. The Director denied the waiver application, determining that the Petitioner did not merit a favorable exercise of discretion to waive the applicable grounds of inadmissibility under sections 212(a)(2)(A)(i)(I) for being convicted of a crime involving moral turpitude; 212(a)(6)(A)(i) for being present in the United States without being admitted or paroled; and 212(a)(7)(B)(i)(I) of the Act for not being in possession of a valid passport. The Director consequently denied the U petition because the waiver application had been denied.

### III. ANALYSIS

On appeal, the Petitioner does not contest the findings of inadmissibility, but contends that USCIS erred in denying his waiver application as a matter of discretion and public interest, did not consider his remorse and rehabilitation or his role as sole provider for his three U.S. citizen children, and failed to consider positive equities. The Petitioner does not contest that he was convicted of robbery under section 211 of the California Penal Code.<sup>2</sup> However, he asserts that other charges were dismissed and that he has had no convictions for the past 14 years. The Petitioner maintains that his children rely on him because they were taken from their mother due to her drug addiction, and that he also has his own mother and two siblings who rely on him for their emotional and financial well-being. The Petitioner acknowledges that he made mistakes, but refers to letters of support from family, friends, and counselors; states that he is in an ongoing process of rehabilitation; and maintains that he placed himself in danger by reporting and testifying against the gang members who victimized him.

Our review of the record, as supplemented on appeal, is limited to whether or not the Petitioner is inadmissible and therefore requires a waiver of his ground(s) of inadmissibility before he can be granted U-1 nonimmigrant status. On appeal, the Petitioner does not contest the findings of inadmissibility and a full review of the record supports the Director's determination that the Petitioner is inadmissible under sections 212(a)(2)(A)(i)(I), 212(a)(6)(A)(i), and 212(a)(7)(B)(i)(I). Beyond the decision of the Director, the Petitioner is also inadmissible under 212(a)(9)(C) of the Act for being unlawfully present in the United States after removal, as the record of proceedings shows he was removed to El Salvador in 2003 and subsequently illegally reentered the United States.

As the Petitioner is inadmissible and we have no jurisdiction to consider the Director's decision on the waiver application, we must dismiss the appeal.

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<sup>2</sup> The Board of Immigration Appeals has determined that "robbery is universally recognized as a crime involving moral turpitude." *Matter of Martin*, 18 I&N Dec. 226, 227 (BIA 1982).

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#### 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 appeal is dismissed.

Cite as *Matter of C-A-G-*, ID# 42252 (AAO Nov. 18, 2016)