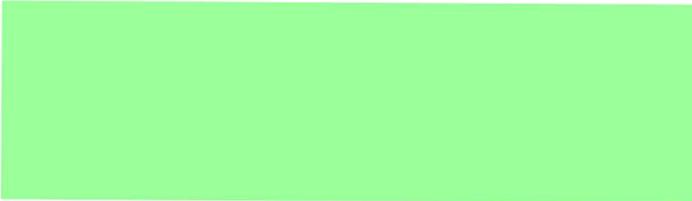




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: JUN 12 2013 Office: VERMONT SERVICE CENTER FILE:

IN RE: PETITIONER:

APPLICATION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), revoked approval of the U nonimmigrant visa petition after proper notification the petitioner and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and approval of the petition will remain revoked.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director revoked approval of the Petition for U Nonimmigrant Status (Form I-918 U petition) on the basis that the petitioner was inadmissible to the United States. On appeal, counsel submits a brief.

Applicable Law

Section 101(a)(15)(U) 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 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

Section 212(a) of the Act, 8 U.S.C. § 1182(a), sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

(6) Illegal entrants and immigration violators.-

* * *

(C) Misrepresentation.-

(i) In general. –Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 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 an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

The regulation at 8 C.F.R. § 214.14(h) states, in pertinent part, the following:

(h) *Revocation of approved petitions for U nonimmigrant status –*

* * *

(2) *Revocation on notice.*

(i) USCIS may revoke an approved petition for U nonimmigrant status following a notice of intent to revoke. USCIS may revoke an approved petition for U nonimmigrant status based on one or more of the following reasons:

* * *

(B) approval was in error. . . .

(ii) . . . USCIS shall consider all relevant evidence presented in deciding whether to revoke the approved petition for U nonimmigrant status. The determination of what is relevant evidence and the weight to be given that evidence will be within the sole discretion of USCIS. . . .

Facts and Procedural History

On November 14, 2006, the petitioner, a native and citizen of India, obtained a B-2 nonimmigrant visa to the United States through the misrepresentation of a material fact. He entered the United States on November 27, 2006, and departed before the period of his authorized stay expired. On June 11, 2007, the petitioner entered the United States on the same fraudulently obtained B-2 nonimmigrant visa. He failed to depart the United States upon expiration of his period of authorized stay. The petitioner filed the instant Form I-918 U petition and a Form I-192 waiver application on October 4, 2011. The director approved the Form I-918 U petition on April 11, 2012. However, after determining that the petitioner was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, the director issued a Notice of Intent to Revoke (NOIR) the Form I-918 U petition, informing the petitioner, in part, that the Form I-918 U petition had been approved in error and he was inadmissible under section 212(a)(6)(C)(i) of the Act. When responding to the NOIR, the petitioner submitted a statement and additional evidence. The director found the petitioner's response insufficient to overcome his proposed ground for revocation, and he revoked approval of the Form I-918 U petition on September 10, 2012, and denied the Form I-192 on the same day. Although the director determined that the petitioner was statutorily eligible for U nonimmigrant status, he revoked the Form I-918 U petition because the petitioner was inadmissible to the United States. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

The Petitioner's Inadmissibility

All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R § 214.1(a)(3)(i). For aliens 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 in conjunction with a Form I-918 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: "There is no appeal of a decision to deny a waiver." As the AAO does not have jurisdiction to review whether the director properly denied the Form I-192, the AAO does not consider whether approval of the Form I-192 should have been granted. The only issue before the

AAO 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).

The director found the petitioner inadmissible under section 212(a)(6)(C)(i) of the Act, as an alien who, by fraud or willfully misrepresenting a material fact, procured a visa to enter the United States. A full review of the record supports the director's determination that the petitioner is inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresenting a material fact. In the record, the petitioner admits to obtaining a nonimmigrant visa by presenting fraudulent documents. On appeal, counsel does not contest the petitioner's inadmissibility but instead focuses her assertions on legal insufficiency of the NOIR. Upon review of the record, we find no procedural defect in the director's issuance of the NOIR and the subsequent notice of revocation.

Conclusion

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Although the petitioner has met the statutory eligibility requirements for U nonimmigrant classification, he is inadmissible under section 212(a)(6)(C)(i) of the Act and his Form I-192 has been denied. He is consequently 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).

ORDER: The appeal is dismissed. The approval of the petition remains revoked.