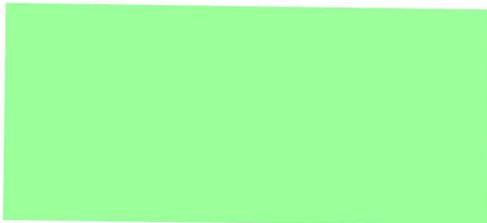


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

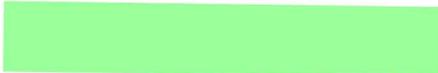


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 28 2014** Office: VERMONT SERVICE CENTER FILE: 

IN RE: PETITIONER: 

PETITION: 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)

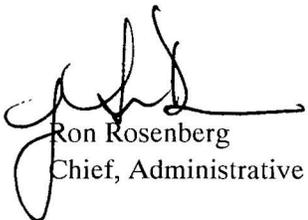
ON BEHALF OF PETITIONER:


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

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 denied the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), because although the petitioner met the criteria for U-1 nonimmigrant status at section 101(a)(15)(U)(i)(I) of the Act, the petitioner was inadmissible to the United States and his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192), was denied. On appeal, counsel submits a brief.

Applicable Law

Section 101(a)(15)(U)(i) 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 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.

Facts and Procedural History

The petitioner is a native and citizen of Yemen who entered the United States on December 19, 1995, on a B-2 nonimmigrant visa with authorization to remain until June 18, 1996. On April 20, 2011, the petitioner filed the Form I-918 U petition and an accompanying Form I-192. On August 6, 2013, the director denied the Form I-918 U petition and the Form I-192. In his decision on the Form I-918 U petition, the director stated that although the petitioner met the criteria for U-1 nonimmigrant status at section 101(a)(15)(U)(i)(I) of the Act, he was inadmissible to the United States and his request for a waiver of inadmissibility had been denied. The director determined that the petitioner entered into a marriage for the purpose of evading the

immigration laws and was inadmissible under section 212(a)(6)(C)(i) (fraud/misrepresentation) of the Act. The director determined further that section 204(c) of the Act, 8 U.S.C. § 1154(c), barred approval of the petition. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, counsel asserts that by not stating the basis for the marriage fraud determination and allowing the petitioner to respond to the allegation, USCIS “committed legal error in applying §204(c)” and violated the petitioner’s due process rights. In addition, counsel claims that the marriage fraud bar does not apply to U visa applicants.

Analysis

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 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 record establishes that on March 27, 2001, the petitioner married a U.S. citizen. On July 5, 2001, the petitioner’s spouse filed a Petition for Alien Relative (Form I-130) on behalf of the petitioner, which was denied on November 1, 2002. On January 9, 2003, the petitioner’s spouse filed another Form I-130 on behalf of the petitioner. On June 10, 2008, the Field Office Director, Fresno, California, denied the Form I-130, noting that during the petitioner’s adjustment of status interview, he and his spouse gave contradictory answers to questions regarding their marital relationship. The Field Office Director found the petitioner and his spouse had entered into their marriage for the purpose of evading the immigration laws of the United States. The petitioner failed to submit any rebuttal evidence and the evidence in the record, including the adjustment of status interview notes, is sufficient to show that the petitioner entered into his marriage for the purpose of evading the immigration laws of the United States. Therefore, the petitioner is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure a U.S. immigration benefit through fraud or willful misrepresentation.

Counsel claims that the petitioner’s due process rights were violated because USCIS did not give him the “opportunity to rebut the allegation of marriage fraud.” However, the petitioner had an opportunity to rebut the finding of marriage fraud on appeal and he failed to submit any rebuttal evidence. The petitioner may contest his inadmissibility due to fraud or misrepresentation, but it is his burden to prove eligibility for the immigration benefit sought. *See* section 291 of the Act; 8 C.F.R. § 214.14(c)(4). *See also Matter of Phillis*, 15 I&N Dec. 385, 386 (BIA 1975) (“where there is reason to doubt the validity of the marital relationship, [the burden shifts to the applicant to] present evidence to show that it was not entered into for the primary purpose of evading the

immigration laws”). In addition, the petitioner did not demonstrate any resultant prejudice such as would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *see also Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000).¹

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). Although the petitioner has met the statutory eligibility requirements for U nonimmigrant classification, he has not established that he is admissible to the United States or that his ground of inadmissibility has been waived. 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). In addition, the director denied the petitioner's application for a waiver of inadmissibility and we have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3).

ORDER: The appeal is dismissed. The petition remains denied.

¹ As the petitioner is inadmissible under section 212(c)(6)(C)(i) of the Act, we shall not address counsel's claims regarding the applicability of section 204(c) of the Act to the instant petition.