



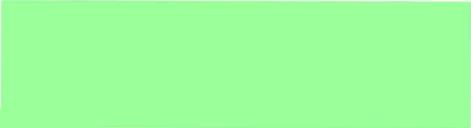
U.S. Citizenship
and Immigration
Services

(b)(6)

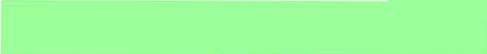


Date: Office: VERMONT SERVICE CENTER

FEB 19 2014



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. 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 her 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) 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.

Factual and Procedural History

The petitioner is a native and citizen of Thailand who entered the United States on June 12, 2003 on a B-2 nonimmigrant visa. The petitioner filed the Form I-918 U petition and an accompanying Form I-192 on November 12, 2010. The director issued a Request for Evidence (RFE) on June 17, 2011 regarding the Form I-192, noting that the petitioner was inadmissible to the United States. The petitioner, through counsel, responded with additional evidence. On March 28, 2012, 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, she was inadmissible to the United States and her request for a waiver of inadmissibility had been denied. The director

determined that the petitioner was inadmissible under section 212(a)(6)(C)(i), (fraud/misrepresentation) of the Act.¹ The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, counsel does not dispute that the petitioner is inadmissible to the United States but claims that she merits a favorable exercise of discretion because her ground of inadmissibility “is a direct result of her victimization.”

Analysis

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 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).

A full review of the record supports the director’s determination that the petitioner is inadmissible under section 212(a)(6)(C)(i) (fraud/misrepresentation) of the Act. The record establishes and the petitioner admits that she married a U.S. citizen in order to evade U.S. immigration laws. 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.

On appeal, counsel does not contest the petitioner’s inadmissibility but instead focuses her assertions on why the director should have favorably exercised his discretion and approved the petitioner’s Form I-192 waiver request. 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).

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, she has not established that she is admissible to the United States or that her ground of inadmissibility has been

¹ The director noted that the petitioner may be inadmissible under section 212(a)(2)(D)(i) (engaging in prostitution within 10 years of her admission to the United States) of the Act, but he did not make a final determination. However, while it is the petitioner’s burden to show she is admissible to the United States, whether she has engaged in prostitution within 10 years of her admission to the United States is moot as she is inadmissible on another ground.

(b)(6)

NON-PRECEDENT DECISION

Page 4

waived. She 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 petition remains denied.