

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **OCT 14 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.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
- (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
- (III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
- (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). False imprisonment is listed as qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

Section 101(a)(15) of the Act defines the term “immigrant” as “every alien except an alien who is within one of the following classes of nonimmigrant aliens.” Section 101(a)(15)(U) of the Act is one such nonimmigrant classification that is not included in the definition of “immigrant” at section 101(a)(15) of the Act.

The regulation at 8 C.F.R. § 214.14(c)(4) prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by [U.S. Citizenship and Immigration Services (USCIS)]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be

bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

In addition, section 212(d)(14) of the Act requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Petition for U Nonimmigrant Status (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.

* * *

(7) Documentation requirements.-

(A) Immigrants.-

- (i) In General.-Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission—

- (I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document . . .

* * *

is inadmissible.

Facts and Procedural History

The petitioner is a native and citizen of Yemen who married his wife on June 17, 1990 in Yemen. On July 17, 1990, the petitioner entered the United States as a lawful permanent resident, classified as a P-11, Unmarried Son or Daughter of a U.S. citizen. The petitioner filed the instant Form I-918 U petition with an accompanying law enforcement certification (Form I-918 Supplement B) on January 31, 2012. On June 20, 2012, the petitioner filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On January 18, 2013, the director issued a Request for Evidence (RFE) noting that the Form I-918 U

petition was not completed correctly and requesting a new petition with an original signature. On May 1, 2013, the director issued another RFE regarding the petitioner's grounds of inadmissibility. The petitioner, through counsel, responded to the RFEs with additional evidence and another Form I-192.

On August 12, 2013, the director found that the petitioner did not establish his eligibility for U nonimmigrant status and denied the Form I-918 U petition accordingly. Although the director determined that the petitioner was statutorily eligible for U nonimmigrant status, she denied the Form I-918 U petition because the petitioner was not admissible to the United States as a nonimmigrant because even though he obtained his lawful permanent resident status through a mistake and is in removal proceedings, he remains a lawful permanent resident of the United States. In her decision, the director cited *Matter of A*, 6 I&N Dec. 651 (BIA 1955), and determined that the petitioner could not be granted U nonimmigrant status because he still held lawful permanent resident status and could not simultaneously be an immigrant and nonimmigrant. On the same day, the director denied the Forms I-192 determining that the petitioner was inadmissible under sections 212(a)(7)(A)(i) (immigrant without documents) and 212(a)(6)(C)(i) (fraud/misrepresentation) of the Act. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

Analysis

Lawful Permanent Resident

On appeal, counsel asserts that during a master calendar hearing before an immigration judge, the petitioner conceded removability under section 237(a)(1)(A) (alien inadmissible to the United States at the time of entry) of the Act; and therefore, "he is without status." Pursuant to section 214(p)(5) of the Act, an alien seeking U nonimmigrant status may apply for any other immigration benefit or status for which he or she may be eligible. However, USCIS will only grant one immigrant or nonimmigrant status at a time. *See* 72 Fed. Reg. 179, 53014-53042, 53018 (Sept. 17, 2007).

The petitioner has been a lawful permanent resident of the United States since July 17, 1990. On September 12, 2011, a Notice to Appear was issued to the petitioner, placing him in removal proceedings, and he remains in removal proceedings before the Immigration Court in San Francisco, California. His next hearing is scheduled for March 16, 2016. Lawful permanent resident status terminates upon entry of a final administrative order of removal, and since the petitioner is still in removal proceedings and an order of removal has not been finalized, he remains an immigrant. 8 C.F.R. § 1.2 (*definition of lawfully admitted for permanent residence*); *see also Etuk v. Slattery*, 936 F.2d 1433, 1447 (2d Cir. 1991) (citing *Matter of Gunaydin*, 18 I&N Dec. 326 (BIA 1982)). Lawful permanent residency does not end upon commission of acts which may render the resident inadmissible or removable, but upon entry of a final administrative order of removability based on such acts. *Matter of Gunaydin*, 18 I&N Dec. at 328. In addition, eligibility for a benefit request must be established at the time of petition filing, particularly for individuals seeking U nonimmigrant classification, who are subject to an annual cap on U-1 nonimmigrant status and are placed on a waiting list, by filing date of petition, if they cannot be granted such status due solely to the cap. *See* 8 C.F.R. §§ 103.2(b)(1), 214.14(d); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Further, as noted by the director, section 101(a)(15) of the Act defines the term "immigrant" as "every alien except an alien who is within one of the following classes of nonimmigrant aliens." Section 101(a)(15)(U) of the Act is

one such nonimmigrant classification that is not included in the definition of “immigrant” at section 101(a)(15) of the Act.

Accordingly, the petitioner is ineligible for U nonimmigrant status because he is currently a lawful permanent resident. We note, however, that even if the petitioner’s status as a lawful permanent resident had been terminated, he would nevertheless be ineligible for U nonimmigrant status because he has failed to establish that he was the victim of a qualifying crime, which renders him ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, and he is inadmissible to the United States and the grounds of inadmissibility have not been waived.

Victim of a Qualifying Crime

The director denied the petitioner’s Form I-918 U petition because although the petitioner was statutorily eligible for U nonimmigrant status, he was inadmissible to the United States. However, to be eligible for U nonimmigrant classification, an alien must establish that he was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

The Form I-918 Supplement B that the petitioner submitted was signed by [REDACTED] of Police, [REDACTED] California Police Department (certifying official), on September 30, 2011. The certifying official lists the criminal activities of which the petitioner was a victim as false imprisonment and armed robbery, and California Penal Code (CPC) § 211, robbery, is listed as the criminal activity that was investigated or prosecuted. In addition, the Crime Report from the [REDACTED] Department of Public Safety indicates that robbery was investigated. The crime of robbery is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses “any similar activity” to the enumerated crimes, the regulation defines “any similar activity” as “criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.” 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the robbery offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question. The petitioner has not demonstrated that the nature and elements of the criminal offense of which he was a victim, robbery, are substantially similar to those of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act.

In addition, we recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. Although the certifying official indicated at Part 3.1 of the Form I-918 Supplement B that the petitioner was a victim of false imprisonment, which is a qualifying crime listed at section 101(a)(15)(U)(iii) of the Act, there is no evidence that he or any other law enforcement entity investigated false imprisonment. When describing the criminal activity investigated in the crime report, the officer indicated that the petitioner’s wallet and money were taken from him while he was held at knifepoint. The only criminal statute listed at Part 3.3 of the Form I-918 Supplement B pertains to robbery, and the crime report noted that the crime was CPC § 211 (robbery). There is no evidence that the certifying agency detected, investigated or prosecuted attempted or actual false imprisonment. The petitioner has not

shown that any crime other than robbery was investigated or prosecuted by the law enforcement agency. The petitioner has, therefore, failed to establish that he was the victim of a qualifying crime as required by section 101(a)(15)(U)(i) of the Act, and the director's conclusion that the petitioner was statutorily eligible for U nonimmigrant classification is withdrawn.¹ Contrary to the director's decision, the petitioner is statutorily ineligible for U nonimmigrant status.

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 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 we do not have jurisdiction to review whether the director properly denied the Form I-192, we do not consider whether approval of the Form I-192 should have been granted but 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)(7)(A)(i) of the Act. The petitioner has not submitted evidence that he has a valid entry document, nor does he dispute his lack of a valid entry document. Accordingly, the petitioner is inadmissible under section 212(a)(7)(A)(i) of the Act.

The director also found the petitioner inadmissible under section 212(a)(6)(C)(i) of the Act for fraudulently or willfully misrepresenting a material fact in an attempt to seek admission into the United States. The evidence in the record establishes that the petitioner entered the United States on July 17, 1990, as a lawful permanent resident, classified as a P-11, Unmarried Son or Daughter of a U.S. citizen. However, the petitioner married his wife on June 17, 1990 in Yemen. Therefore, the petitioner is inadmissible under section 212(a)(6)(C)(i) of the Act.

Conclusion

The petitioner is a lawful permanent resident of the United States, and he did not establish that he was the victim of a qualifying crime. Further, the petitioner has not established that he is admissible to the United States or that his grounds of inadmissibility have been waived. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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. The petition remains denied.