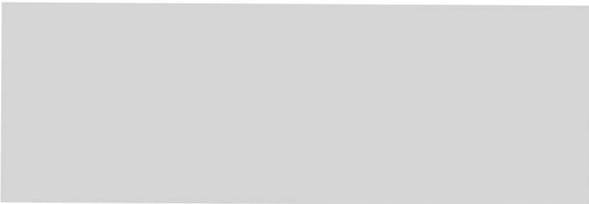




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: APR 01 2015

Office: VERMONT SERVICE CENTER

FILE: 

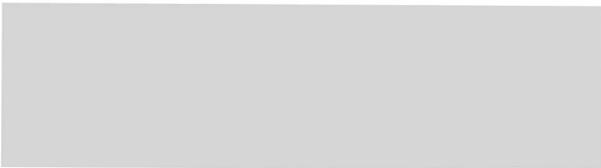
IN RE:

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 Acting 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 the petitioner was inadmissible to the United States and his Application for Advance Permission to Enter as a Nonimmigrant (Form I-192 waiver) was denied. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner concedes that he is inadmissible, and submits a brief and additional evidence to demonstrate that the director should favorably exercise discretion and approve the waiver.

Applicable Law and Appellate Jurisdiction

Section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i), 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. The 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 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 waiver 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. The only issue that may come before us 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).

Facts and Procedural History

The petitioner, a native and citizen of Mexico, represents that he entered the United States in April 1991 without inspection, admission, or parole by an immigration officer. Between 1993 and 2009, the petitioner had numerous interactions with law enforcement. On April 24, 2009, the petitioner was a victim of attempted murder and aggravated battery, which left him permanently blind. The petitioner filed the instant Form I-918 U petition on November 9, 2012, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B), and a Form I-192 waiver of inadmissibility. The director subsequently issued a Request for Evidence (RFE) with respect to the petitioner’s Form I-192 waiver. The petitioner responded with additional evidence, which the director found insufficient to establish that the

petitioner merited a favorable exercise of discretion. The director denied the Form I-192, and consequently denied the Form I-918 U petition.

The petitioner timely submitted a motion to reopen and reconsider the denial of the Form I-192 waiver, and simultaneously filed the instant appeal of the Form I-918 U petition. The director granted the petitioner's motion, but affirmed her prior decision to deny the Form I-192 waiver. In her decision on motion, the director concluded that the petitioner was inadmissible under section 212(a)(6)(A)(i) of the Act (present without admission or parole). The director further noted that insufficient documentation had been provided regarding the petitioner's convictions for resisting or obstructing a peace officer and aggravated battery to determine whether the petitioner was also inadmissible under section 212(a)(2)(A)(i)(I) of the Act (crime involving moral turpitude (CIMT)).

Analysis

As we do not have jurisdiction to review whether the director properly denied the Form I-192, the only issue before us is whether the director was correct in finding the petitioner inadmissible to the United States, thus requiring an approved Form I-192.

On appeal, the petitioner acknowledges that he is inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole), and correctly asserts that his conviction for aggravated battery (720 ILCS 5/12-4(a) (1997)) is a CIMT, rendering him inadmissible under section 212(a)(2)(A) of the Act. In addition, the petitioner states, and we concur, that his misdemeanor conviction for resisting or obstructing a peace officer in violation of chapter 720, subdivision 5, section 31-1(a) of the Illinois Compiled Statutes is not a CIMT. See *Abbott v. Sangamon County, Illinois*, 705 F.3d 706, 721 (7th Cir. 2013) (quoting the Illinois Supreme Court's holding in *People v. Raby*, 240 N.E.2d 595, 599 (Ill. 1968), that 720 ILCS 5/31-1(a) "proscribe[s] only some physical act which imposes an obstacle which may impede, hinder, interrupt, prevent[,] or delay the performance of an officer's duties, such as going limp . . .").

The petitioner argues that in assessing whether or not to grant the waiver as a matter of discretion, the director did not properly balance the positive and negative factors of his application. The petitioner highlights his physical ailments and his evidence of rehabilitation as factors that were not properly assessed. He asserts that the AAO has jurisdiction to review the director's denial of the Form I-192 waiver, citing the Seventh Circuit's ruling in *L.D.G. v. Holder*, 744 F.3d 1022 (7th Cir. 2014). In *L.D.G.*, the Seventh Circuit determined that an immigration judge has concurrent jurisdiction to waive statutory grounds of inadmissibility for U visa applicants under section 212(d)(3) of the Act, 8 U.S.C. § 1182(d)(3)(A). *Id.* at 1031. The petitioner posits that if an immigration judge denies a waiver, the applicant would have the opportunity to appeal the denial to the Board of Immigration Appeals. We note that the Seventh Circuit's decision in *L.D.G.* discusses only the Department of Justice's jurisdiction to adjudicate a waiver in the first instance. It does not make any ruling with respect to the Department of Homeland Security's concurrent adjudication of waivers, nor does it address the portion of the regulation at 8 C.F.R. § 212.17(b)(3) that is at issue here. Specifically, the regulation at 8 C.F.R. § 212.17(b)(3) states, "There is no appeal of a decision to deny a waiver." The decision in *L.D.G.* does not compel the Department of Homeland Security (USCIS) to deviate from the plain language of the regulation in its own adjudications. Accordingly, as no appeal lies

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NON-PRECEDENT DECISION

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from the denial of the waiver, we are unable to review whether the director's exercise of discretion in this matter was proper.

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 appears to have met the statutory eligibility requirements for U nonimmigrant classification, he 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, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

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