



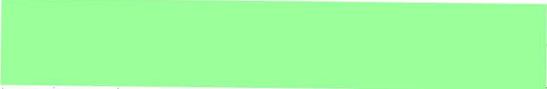
U.S. Citizenship
and Immigration
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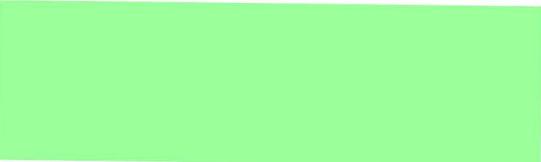


Date: Office: VERMONT SERVICE CENTER FILE: 

JAN 07 2015

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,

for 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 is inadmissible to the United States and his Application For Advance Permission to Enter as a Nonimmigrant (Form I-192) had been denied. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner does not contest his inadmissibility on the stated grounds, and instead, submits a brief 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 is a native and citizen of Ecuador who claims to have entered the United States on October 17, 1996, without admission, inspection or parole. A Notice to Appear was issued against the petitioner on October 11, 2011, placing him into removal proceedings, and on November 29, 2011, he was ordered removed from the United States by an immigration judge.

The petitioner filed the instant Form I-918 U petition on November 30, 2011, with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B). On October 11, 2012, and August 2,

2013, the director issued two Requests for Evidence (RFE) and the petitioner responded with additional evidence, including a Form I-192.

The director ultimately denied the Form I-192, finding that the petitioner was inadmissible under the following sections of the Act: 212(a)(6)(A)(i) (present without admission or parole) and 212(a)(7)(B)(i)(I) (not in possession of a valid passport). After reviewing the evidence submitted in support of the waiver application, the director determined that the petitioner had not demonstrated that he warranted a favorable exercise of discretion, and denied the Form I-192. As the petitioner was found inadmissible and his Form I-192 had been denied, the director consequently denied the petitioner's Form I-918 U petition. The petitioner filed a timely appeal of the denial of his petition.

Analysis

We conduct appellate review on a *de novo* basis. On appeal, the petitioner does not dispute that he is inadmissible to the United States on the stated grounds but asserts that he merits a favorable exercise of discretion such that his waiver application and Form I-918 U petition should be granted.¹ However, 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. See 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 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.

¹ In his brief on appeal, the petitioner also asserts that he has not been convicted of a crime involving moral turpitude (CIMT), however, the director did not find the petitioner inadmissible for having been convicted of a CIMT.