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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

[redacted]

D14

Date: DEC 05 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the nonimmigrant petition and affirmed his denial upon granting the petitioner's subsequent motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

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.

The director denied the Form I-918 because the petitioner was inadmissible to the United States and his request for a waiver of inadmissibility (Form I-192, Application for Advance Permission to Enter as Nonimmigrant) had been denied.

On appeal, counsel concedes the petitioner's inadmissibility, but claims the director improperly found that he did not merit a waiver of 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 application 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 application, the AAO cannot address counsel's claims regarding why the petitioner's waiver request should have been granted. The only issue before the AAO is whether the director was correct in finding the petitioner to be inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

The Petitioner's Inadmissibility

The record shows that the petitioner entered the United States without inspection and he is consequently inadmissible under section 212(a)(6)(A)(i) of the Act as an alien present in the United States without being admitted or paroled.

The record also contains evidence that the petitioner was convicted of furnishing marijuana in violation of section 11360(b) of the California Health and Safety Code.[1] The petitioner is

[1] [redacted]

consequently inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of violating a state law relating to a controlled substance.

The petitioner was also convicted of inflicting corporal injury on his spouse in violation of section 273.5(a) of the California Penal Code (CPC),[2] which renders him inadmissible for commission of a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act. *See Grageda v. INS,* 12 F.3d 919, 921-22 (9th Cir. 1993) (willful infliction of corporal injury on a spouse under CPC § 273.5(a) is a crime involving moral turpitude); *Matter of Tran*, 21 I&N Dec. 291 (BIA 1996) (same).

In 2008, the petitioner was convicted of driving under the influence of a drug in violation of section 23152(a) of the California Vehicle Code. The petitioner's son, who was then ten years old, was in the vehicle with the petitioner at the time and the petitioner was also convicted of endangering a child in violation of CPC § 273a(a) of the California Penal Code.[3] Consequently, the petitioner's conviction for child endangerment further renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act for a crime involving moral turpitude. *See Hernandez-Perez v. Holder*, 569 F.3d 345 (8th Cir. 2009) (child endangerment involves moral turpitude where the criminal statute requires a conscious disregard of a substantial risk to a child in the person's care).

A full review of the record supports the director's determination that the petitioner is inadmissible under subsections 212(a)(2)(A)(i)(I) and (II), and (a)(6)(A)(i) of the Act. Counsel does not contest the beneficiary's inadmissibility on appeal and submits no evidence or legal analysis to overcome the director's inadmissibility determination.

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 U petition. 8 C.F.R. § 212.17(b)(3).

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[2] USCIS records indicate that the petitioner was convicted of three counts of infliction of corporal injury to a spouse or child in 1993. However, in response to the director's Request for Evidence of the applicable court records for adjudication of the petitioner's Form I-192 waiver application, the petitioner submitted letters from the Santa Barbara County, California Superior Court, Criminal Division stating that the records for those cases had been destroyed pursuant to the state-mandated retention period. Nonetheless, the petitioner admitted on his Form I-192 that he had been convicted of inflicting corporal injury on a spouse in 1993.

[3] This provision states:

> Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

Cal. Penal Code Ann. § 273a(a) (West 2008).

Conclusion

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). 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 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.