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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)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(i)

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), dismissed the nonimmigrant petition and 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 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 Petition for U Nonimmigrant Status (Form I-918), 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 her 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 she 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 the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

The Petitioner's Inadmissibility

The preponderance of the evidence demonstrates that the petitioner is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting the nature of her second marriage to a United States citizen in order to obtain lawful permanent residency. The record shows that the petitioner entered the United States on June 18, 2001 as a nonimmigrant visitor and did not depart the United States after her period of authorized stay expired on December 17, 2001. The petitioner divorced her first husband on August 19, 2004 and married her second husband on September 9, 2004.

On January 18, 2007, USCIS officers visited the petitioner's claimed marital home to investigate the bonafides of the marriage for adjudication of the alien relative petition (Form I-130) filed by the petitioner's second husband on her behalf and the petitioner's corresponding application for adjustment of status (Form I-485). During the visit, the officers observed that the petitioner's second

husband was living in the bottom level of the house while the petitioner and her son resided in the upper level. The petitioner's second husband admitted to the officers that the marriage was one of mutual convenience in which he gained a place to live without paying rent and the petitioner received some security and the ability to obtain a "green card." The petitioner told the officers that the marriage had been arranged by a family friend and an attorney.

On February 27, 2007, the Seattle District Office denied the alien relative petition filed by the petitioner's second husband and the petitioner's corresponding adjustment application based on its determination that the petitioner had married her second husband solely to circumvent the immigration laws.

The petitioner filed the instant Form I-918 on September 5, 2008. In a declaration submitted in support of her corresponding Form I-192 waiver request, the petitioner asserted that she married her second husband in good faith and that she never told the USCIS officers that she had married him "only for a greencard because that is not true." However, on her Forms I-192 filed on July 9, 2010 and March 2, 2011, the petitioner conceded that she is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation.

A full review of the record supports the director's determination that the petitioner is inadmissible under section 212(a)(6)(C)(i) of the Act. On appeal, neither the petitioner nor counsel disputes her inadmissibility. Rather, counsel asserts that the appeal should be sustained upon favorable adjudication of her third Form I-192 filed on March 2, 2011. The director denied the petitioner's third application for a waiver of inadmissibility on June 2011 and we have no jurisdiction to review that decision. 8 C.F.R. § 212.17(b)(3).

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