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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

D14

DATE: OCT 04 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, denied the nonimmigrant visa 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) 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 petition because the petitioner is not admissible to the United States and his request for an advanced waiver of inadmissibility (Form I-192) was denied. On appeal, counsel submits a brief and copies of documents that were previously provided.

Section 101(a)(15)(U) of the Act, provides, in pertinent part, for U nonimmigrant classification to:

> (i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that –
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> (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);
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> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
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> (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[.]

Facts and Procedural History

The petitioner is a native and citizen of Mexico. The petitioner filed the Form I-918 U petition on August 19, 2008. The petitioner subsequently filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, on June 9, 2009. The director issued a Request for Evidence (RFE) on September 24, 2009[1] asking the petitioner to: clarify conflicting information on the Form I-918; submit copies of the arrest report, court disposition, and law regarding his January 1991 arrest; a statement describing his victimization; and evidence to demonstrate that he was the victim of substantial physical or mental abuse as a result of qualifying criminal activity. The petitioner, through counsel, responded to the RFE. On July 28, 2010, the director denied the Form I-918

[1] The director also issued separate RFEs relating to the Form I-192, Advance Permission to Enter as Nonimmigrant application.

petition and the Form I-192 application. In his decision on the Form I-918 petition, the director stated that the petitioner was not eligible for U nonimmigrant status because he was inadmissible and his request for a waiver of inadmissibility had been denied.

On appeal, counsel asserts that the only ground applicable to a U nonimmigrant's application for adjustment of status under section 245(m) of the Act is section 212(a)(3)(E) of the Act and that the petitioner in this matter does not fall within the five grounds discussed in section 212(a)(3)(E) of the Act. Counsel also contends that during the last 19 years, the petitioner was convicted of only one misdemeanor, which was a minor offense of showing false identification to a peace officer.[2]

Preliminarily, we find that counsel misreads the applicability of section 245(m) of the Act to the present matter. Section 245(m) applies to the adjustment of status for U nonimmigrants and states, in pertinent part:

> (1) The Secretary of Homeland Security may adjust the status of an alien *admitted* into the United States (or otherwise provided nonimmigrant status) under section 1101(a)(15)(U) of this title to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) . . . .

The petitioner in this matter has not been admitted into the United States under section 1101(a)(15)(U) of the Act and the instant petition is a request for initial, U nonimmigrant classification; not adjustment of status. . Thus section 245(m) of the Act is inapplicable.

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 any grounds of inadmissibility as a matter of discretion except for the inadmissibility ground at section 212(a)(3)(E) of the Act. The regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 application 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 does not consider whether approval of the Form I-192 application 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). We concur with the director's determination that the applicant is inadmissible.

The Petitioner's Inadmissibility

The director did not find the petitioner ineligible for U nonimmigrant status for any reason other than his inadmissibility. It appears, therefore, that the director determined that the petitioner met all the statutory eligibility criteria for U nonimmigrant status, but concluded that he could not be

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[2] Section 212(a)(3)(E) of the Act lists grounds of inadmissibility relating to participation in Nazi persecution, genocide, or any act of torture or extrajudicial killing.

granted such status because he was found to be inadmissible and ineligible for a waiver of inadmissibility.

The record indicates that the petitioner claims to have entered the United States in 1993 without being inspected, admitted or paroled by a legacy Immigration and Naturalization Services (INS) officer. The petitioner is, therefore, inadmissible under section 212(a)(6)(A)(i) of the Act as an illegal entrant.

In addition, the petitioner's criminal history includes two convictions. On appeal, counsel claims that the petitioner was convicted of only one crime, which was for a misdemeanor 19 years ago. Evidence in the record, however, belies counsel's assertion, as the petitioner provided the following dispositions when responding to the director's March 16, 2010 request for evidence:

1. On February 6, 1989, the petitioner was convicted of assault with a deadly weapon or force likely to produce great bodily injury, in violation of section 245of the California Penal Code[3]. Although the record does not specify under which subsection the petitioner was convicted, it has long been recognized that assault with a deadly weapon is a crime involving moral turpitude. *See Matter of Medina*, 15 I&N Dec. 611 (BIA 1976). Accordingly, the petitioner is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) for being convicted of a crime involving moral turpitude.

2. On July 1, 1988, the petitioner was convicted of receiving known stolen property, in violation of CPC § 496. The record lacks information sufficient to determine whether or not this offense constituted a crime involving moral turpitude. *See Castillo-Cruz v. Holder*, 581 F.3d 1154, 1159-61 (CPC § 496 does not categorically involve moral turpitude because the specific offense may lack the intent to permanently deprive the owner of the property).

U.S. Citizenship and Immigration Services (USCIS) records show that the petitioner has also been arrested for four other offenses. Although requested to do so, the petitioner did not provide dispositions for the following arrests nor did he provide an explanation for why such dispositions were not available:

- January 18, 1988 – possession of narcotic/controlled substance for sale;
- April 4, 1989 – possession of narcotics for sale- two counts;
- August 21, 1989 – possession controlled substance and possession of narcotic substance;
- July 1, 1991 – possession controlled substance and possession controlled substance for sale.

We observe that the above-cited arrests for which dispositions were requested involve the possession and/or sale of narcotics/controlled substances and that any conviction for any one of these arrests would make the petitioner inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

[3] Superior Court of California, Alameda County, Case numbe[redacted]

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. 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).

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