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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

D14

Date: MAY 09 2012 Office: VERMONT SERVICE CENTER File: [redacted]

IN RE: Petitioner: [redacted]

PETITION: Petition for Nonimmigrant Classification as a Victim of Qualifying Criminal Activity 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 Petition for U Nonimmigrant Status (Form I-918 U petition) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. 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.

Section 101(a)(15)(U)(i) of the Act, provides for U nonimmigrant classification to aliens who have suffered substantial physical or mental abuse as a result of having been the victim of certain criminal activity and who assist government officials in investigating or prosecuting such criminal activity. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), 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 petition because the petitioner is not admissible to the United States and the petitioner's Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) was denied. On appeal, counsel submits a Notice of Appeal (Form I-290B), a supplemental letter, additional evidence and copies of documentation already in the record. Counsel does not dispute the director's determination that the petitioner is inadmissible to the United States. Instead, counsel asserts that the petitioner merits a favorable exercise of discretion to waive her grounds 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. There is no appeal of a decision to deny a Form I-192 waiver application. 8 C.F.R. § 212.17(b)(3). Consequently, the AAO lacks jurisdiction to review whether the director properly denied the Form I-192 waiver application. The only issue before the AAO on appeal is whether the director was correct in finding the petitioner to be inadmissible and requiring an approved waiver pursuant to the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

The record contains evidence of the petitioner's following convictions:

- April 7, 2009- pled nolo contendere and found guilty of violating section 647(b) of the California Penal Code (CPC) (disorderly conduct-solicit/engage in act of prostitution) and sentenced to 45 days in jail and 36 months of probation-probation revoked on July 10, 2009-probation reinstated and petitioner ordered to serve additional 90 days in jail on August 27, 2009-probation revoked on April 20, 2010[1]

[1] The petitioner has failed to provide any further evidence as to the outcome of the revocation of probation.

- August 27, 2009- pled nolo contendere and found guilty of violating section 653.22(A) of the CPC (loitering with intent to commit prostitution) and was sentenced to 3 years of probation-probation revoked on September 8, 2010-probation reinstated and petitioner ordered to serve 180 days in jail on September 28, 2010-probation revoked and bench warrant issued on November 4, 2010-probation reinstated and petitioner sentenced to serve an additional 90 days in jail on November 17, 2010

The term "crime involving moral turpitude" is not defined in the Act or the regulations, but has been part of the immigration laws since 1891. *Jordan v. De George*, 341 U.S. 223, 229 (1951) (noting that the term first appeared in the Act of March 3, 1891, 26 Stat. 1084). The Board of Immigration Appeals (BIA) has explained that moral turpitude "refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Matter of Franklin*, 20 I&N Dec 867, 868 (BIA 1994), *aff'd*, 72 F.3d 571 (8th Cir. 1995). A crime involving moral turpitude must involve both reprehensible conduct and some degree of scienter, be it specific intent, deliberateness, willfulness or recklessness. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689 n.1, 706 (A.G. 2008).

Based upon the petitioner's convictions under CPC §§ 647(b) and 653.22(A), she is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). See *Rohit v. Holder*, 670 F. 3d 1085 (9th Cir. 2012); *Matter of Lambert*, 11 I&N Dec. 340 (BIA 1965); *Matter of W-*, 4 I&N Dec. 401 (BIA 1951). The petitioner is also inadmissible under: section 212(a)(2)(D)(i) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i), for engaging in prostitution within the last 10 years; and section 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A), for being present in the United States without admission or parole.[2]

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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). On appeal, counsel has failed to establish the petitioner's admissibility and eligibility for U nonimmigrant classification. The petitioner is inadmissible under sections 212(a)(2)(A)(i)(I), 212(a)(2)(D)(i) and 212(a)(6)(A) of the Act and the petitioner's Form I-192 has been denied. The petitioner 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.

[2] In her April 29, 2010 declaration, the petitioner stated that she entered the United States when she "was a small toddler and crossed the border between Mexico and California."