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

(b)(6)

DATE: APR 17 2013 Office: VERMONT SERVICE CENTER FILE:

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 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 AAO inappropriately applied the law 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 in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the 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 petition because the petitioner is not admissible to the United States and his request for a waiver of inadmissibility was denied. On appeal, counsel submits a brief and additional evidence.

Section 101(a)(15)(U) 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, as well as the victims' qualifying family members. 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 is a native and citizen of Mexico who filed the Form I-918 U petition on February 10, 2012 and an accompanying Form I-192, Application for Advance Permission to Enter as Nonimmigrant. The director issued a Request for Evidence (RFE) on April 6, 2012 asking the petitioner to submit, among other items, dispositions of his various arrests. The petitioner, through counsel, responded to the RFE. On October 22, 2012, the director denied the Form I-918 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. The petitioner, through counsel, timely appealed the denial. On appeal, counsel does not dispute the petitioner's inadmissibility but argues that the director abused his discretion in not granting the petitioner's waiver request.

For aliens 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 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).

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

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 1985 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 record contains evidence of the petitioner's following convictions:

- March 10, 1998 – pled guilty and sentenced to five years of probation for violating § 609.52.2(17) of the Minnesota Statutes (M.S.A.) (theft of a motor vehicle)

- April 29, 2002 – pled guilty and sentenced to 90 days in jail and five years of probation for violating M.S.A. § 152.024.1(1) (fourth degree controlled substance, to wit: cocaine); May 3, 2006 – found guilty on probation violation and sentenced to an additional 90 days in jail.

- March 20, 2009 – pled guilty and sentenced to one year probation for violating M.S.A. § 609.50.1(2) (obstructing legal process-interfere with peace officer)

M.S.A. § 609.52 states, in pertinent part:

> (2) Acts constituting theft. Whoever does any of the following commits theft. . . :
>
> * * *
>
> (17) takes or drives a motor vehicle without the consent of the owner or an authorized agent of the owner, knowing or having reason to know that the owner or an authorized agent of the owner did not give consent.

(West 1997)

U.S. Courts have held that the crime of theft or larceny, whether grand or petty, involves moral turpitude. See *Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974)(stating, "It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude[.]" However, the Board of Immigration Appeals (BIA) has indicated that a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). The AAO notes that Minn. Stat. § 609.52.2(17) does not make a distinction as to whether a conviction under this section of the statute constitutes a permanent or temporary taking, and other than his brief statement, the petitioner presents no evidence regarding his intent at the time he committed the crime. Accordingly, the director's denial of the petition on this issue stands.

The record shows that the petitioner pled guilty to a fourth degree controlled substance violation for selling cocaine under M.S.A. § 152.024.1(1). At the time of the petitioner's conviction, M.S.A. § 152.024.1(1) stated, in pertinent part:

Sale crimes. A person is guilty of controlled substance crime in the fourth degree if:

> (1) the person unlawfully sells one or more mixtures containing a controlled substance classified in Schedule I, II, or III, except marijuana or Tetrahydrocannabinols[.]

(West 2001)

The petitioner is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for his conviction relating to the sale of cocaine.

The record shows that the petitioner pled guilty to obstructing a legal process for interfering with a peace officer in violation of M.S.A. § 609.50.1(2). At the time of the petitioner's conviction, M.S.A. § 609.50.1(2) stated that obstruction of a legal process occurs when a person intentionally "obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties[.]" Minn. Stat. Ann. § 609.50.1(2)(West 2009).

The petitioner's 2009 conviction also does not render him inadmissible because it falls within the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act. The petitioner was convicted of obstructing a legal process in violation of M.S.A. § 609.50.1(2), for which he was sentenced to one year of probation. The petitioner's crime is a misdemeanor and punishable by not more than 90 days in jail. Minn. Stat. Ann. § 609.02(3)(West 2009). Consequently, the petitioner's 2009 offense meets the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act and does not render him inadmissible as an alien convicted of a crime involving moral turpitude.

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 based upon his controlled substance and vehicular theft convictions 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.