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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: SEP 19 2014 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U 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 Form I-918 U petition because the petitioner was inadmissible to the United States and his Application for Advance Permission to Enter as Nonimmigrant (Form I-192) for a waiver of inadmissibility had been denied due to abandonment. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, counsel does not contest the petitioner's inadmissibility and instead, asserts that this matter should be remanded to allow the petitioner an opportunity to respond to the director's Request for Evidence (RFE) relating to the petitioner's Form I-192.

Applicable Law

Section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i), 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, Petition for U Nonimmigrant Status (Form I-918 U petition), and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

> (2) Criminal and Related Grounds
>
> (A) Conviction of Certain Crimes
>
> (i) In General
> Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
> (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance . . .
>
> is inadmissible.

* * *

(6) Illegal Entrants and Immigration Violators

(A) Aliens Present Without Permission or Parole

(i) In General.-An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

* * *

(7) Documentation requirements.-

* * *

(B) Nonimmigrants.-

(i) In general.-Any nonimmigrant who-

(I) Not in possession of a passport valid for a minimum of six months from the date of expiration . . .

* * *

is inadmissible.

The regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

> The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by [U.S. Citizenship and Immigration Services (USCIS)]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in 1996 using a "visa card." The petitioner filed the instant Form I-918 U petition on June 22, 2012, along with a Form I-192 waiver application. On August 15, 2013, the director issued a RFE requesting certified court records relating to his criminal arrests and convictions and evidence in support of his waiver application.

Specifically, the director noted the petitioner's inadmissibility under sections 212(a)(2)(A)(i)(I) (crimes involving moral turpitude); 212(a)(2)(A)(i)(II) (controlled substance violations); 212(a)(6)(A)(i) (present without admission or parole); and 212(a)(7)(B)(i)(I) (nonimmigrant without valid passport) of the Act. The petitioner did not respond to the RFE. The director denied the Form I-192 for abandonment on January 3, 2014. The director also denied the Form I-918 U petition the same day on the basis that the petitioner was inadmissible to the United States and his waiver application had been denied. Counsel for the petitioner filed a timely appeal, asserting that the original RFE had never been received by counsel or the petitioner and requesting a remand to allow the petitioner an opportunity to respond the RFE.

Analysis

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 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 we do not have jurisdiction to review whether the director properly denied the Form I-192, we do not consider whether approval of the Form I-192 should have been granted. The only issue before us is whether the director was correct in finding the petitioner inadmissible to the United States and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

A full review of the record supports the director's determination that the petitioner is inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. The petitioner indicates in his written statement that he entered the United States in 1996 on a "visa card," but he has not provided credible evidence of his lawful admission on a visa. The petitioner has the burden of proof to demonstrate that he is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act. *See* 8 C.F.R. § 214.14(c)(4) (burden of proof on the petitioner to establish eligibility for a U petition). Here, he has failed to meet his burden of proof in these proceedings to demonstrate that he last entered the United States after being admitted, inspected or paroled. 8 C.F.R. § 214.14(c)(4) (evidentiary burden). As such, the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act.

A review of the record also supports the director's determination that the petitioner is inadmissible under section 212(a)(7)(B)(i)(I) (not in possession of a valid passport) of the Act. The petitioner has not provided a copy of a valid passport. As such the petitioner is inadmissible under section 212(a)(7)(B)(i)(I) of the Act.

The petitioner has also not satisfied his burden of proof in demonstrating that he is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The records indicates that the petitioner was arrested on May 10, 1999 in [redacted] California and was subsequently convicted of Assault with a Deadly Weapon (not a firearm) in violation of section 245(a)(1) of the California Penal Code (CPC) (West 2000), for which he was sentenced to 120 days in jail and 36 months of probation. The petitioner was again arrested on November 20, 2001 for Theft (from $1,500 and less than $20,000) under section 31.03(e)(4) of the Texas Penal Code (TPC) (West 2001). The petitioner did not provide any certified court records to show the final disposition for this arrest, despite having the opportunity to do so as part of the

appellate process. On June 12, 2004, he was against arrested for Assault and Battery in California and was convicted of Battery under CPC § 242 (West 2004).

The Board of Immigration Appeals (Board) has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. *See Matter of Grazley*, 14 I&N Dec. 330, 333 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."). Texas courts recognize that a theft offense under Texas law involves the intent to permanently deprive another of property. *See Vargas v. State*, 818 S.W.2d 875, 879 (Tex. App. 1991). Thus, if convicted, the petitioner's 2001 Texas theft offense would constitute a crime involving moral turpitude. As the petitioner did not submit a disposition of his 2001 theft arrest, he has failed to meet his burden to show that he was not convicted of a crime involving moral turpitude. Likewise, his conviction for assault under CPC § 245(a)(1) may also constitute a crime involving moral turpitude where the offense involved some aggravating factor indicating the perpetrator's moral depravity, including the use of a deadly weapon. *See Matter of Ahortalejo-Guzman*, 25 I&N Dec. 465 (BIA 2011); *In re Sanudo,* 23 I. & N. Dec. 968 (BIA 2006). Accordingly, the petitioner's assault conviction, under a statutory section that involves the use of a deadly weapon as an element of the offense, is a crime involving moral turpitude. The director's finding of the petitioner's inadmissibility under section 212(a)(2)(A)(i)(I) stands.

The petitioner also failed to meet his burden of proof to demonstrate that he is not inadmissible under section 212(a)(2)(A)(i)(II) of the Act for a controlled substance violation. The petitioner was arrested on January 31, 1996 for possession of marijuana. The petitioner again failed to submit a certified disposition from the criminal court showing the disposition of the arrest charge. He, therefore, failed to meet his burden of proof to overcome evidence of his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act as required by demonstrating that he has not been convicted of a controlled substance violation.

On appeal, the petitioner does not contest his grounds of inadmissibility but instead focuses on why the director should remand these proceedings to allow him to respond to the director's RFE relating to his application for a waiver of inadmissibility, which the director denied. However, as noted, although we may review the record on appeal to determine whether the petitioner is inadmissible and requiring a waiver, we have no jurisdiction to review the denial of a Form I-192 waiver application submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3).

Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner 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.