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



**U.S. Citizenship
and Immigration
Services**

[Redacted]

D14

FILE: [Redacted]

Office: VERMONT SERVICE CENTER Date:

DEC 08 2010

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 the \$630 fee. 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 her request for an advanced waiver of inadmissibility (Form I-192) was denied. On appeal, counsel submits a brief, an article by a rape survivor, articles on rape trauma syndrome, and copies of documents already included in the record.

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 –
 - (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);
 - (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
 - (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[.]

- (iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The record in this case provides the following pertinent facts and procedural history: The petitioner is a native and citizen of the Philippines. She entered the United States as a K-1 fiancée on March 16, 2004, and married the U.S. citizen K-1 petitioner on March 24, 2004 in Alaska. On April 28, 2004, the

petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, based upon her alleged marriage. On July 29, 2005, the petitioner's purported spouse withdrew the affidavit of support that he submitted in conjunction with the petitioner's adjustment application, stating that he had entered into the marriage for the sole purpose of helping the petitioner obtain permanent residence in the United States. On November 3, 2005, the Form I-485 was denied. On November 17, 2005, the petitioner was granted deferred action by U.S. Immigration and Customs Enforcement (USICE) due to her assistance with a pending investigation that involved the circumstances of her marriage.

In July 2006, the petitioner filed a request for U nonimmigrant status and interim relief pending the publication of regulations implementing the U classification. On January 26, 2007, U.S. Citizenship and Immigration Services (USCIS) granted the petitioner interim relief in the form of deferred action, which was subsequently extended until December 9, 2010. The petitioner filed the instant Form I-918 U petition and the Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, on April 11, 2008. On October 21, 2009, the director issued to the petitioner a Request for Evidence (RFE), asking the petitioner to submit evidence regarding whether she was the victim of substantial abuse, and to address her inadmissibility under section 212(a)(6)(C)(i) of the Act. The petitioner, through counsel, responded to the RFE. On February 23, 2010, the director denied the Form I-192 waiver application. On February 24, 2010, the director denied the Form I-918 U petition, stating that the petitioner was not eligible for U nonimmigrant status because she was inadmissible and her request for a waiver of inadmissibility had been denied.¹ On March 26, 2010, the petitioner filed a motion to reconsider the director's denial of the Form I-192 waiver application, and in a June 25, 2010 decision, the director granted the motion and affirmed the waiver application's denial.

On appeal, counsel states that the Form I-918 U petition was denied in error because the director failed to identify the particular inadmissibility ground, and instead denied the petition because the Form I-192 waiver application had been denied. Counsel does not concur with the director that the petitioner is inadmissible and presents arguments in support of his assertions. Counsel also argues that, even if the petitioner is inadmissible, her Form I-192 was denied in error and he presents arguments regarding why her Form I-192 waiver application merits a favorable exercise of discretion. Counsel also objects to the denial of the Form I-918 U petition because the petitioner was not afforded an opportunity to review and rebut the negative information in the record as required by 8 C.F.R. § 103.2(b)(16)(i) and (ii).

The director did not find the petitioner ineligible for U nonimmigrant status for any reason other than her inadmissibility. It would appear, therefore, that the director determined that the petitioner met all the statutory eligibility criteria for U nonimmigrant status, but concluded that she could not be granted such status because she was found to be inadmissible and ineligible for a waiver of inadmissibility. The director cited the regulation at 8 C.F.R. § 214.1(a)(3), which provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United

¹ The director indicated in the denial letter that the Form I-192 waiver application was denied on February 11, 2010, which was incorrect. We find this to be a harmless error, however, as the director issued a separate denial letter for the Form I-192 waiver application that contained a February 23, 2010 date, which was one day before the Form I-198 U petition was denied.

United States.

For U nonimmigrant status in particular, 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 a ground of inadmissibility. The regulation at 8 C.F.R. § 212.17(b)(3), further 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 a Form I-192 waiver application, the AAO cannot consider counsel’s arguments on appeal that the Form I-192 waiver 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 waiver pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

Counsel claims in his appellate brief that it is not clear on which ground(s) of inadmissibility the petitioner’s Form I-918 U petition is being denied. We find counsel’s argument on this point disingenuous. The director, in both the initial denial letter and his decision on the petitioner’s subsequent motion regarding the Form I-192 waiver application, found the petitioner inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, a ground of inadmissibility that counsel argues on appeal is inapplicable. Thus, we find no merit to counsel’s assertion that the director committed a procedural error by not identifying in the Form I-918 U petition denial letter the specific ground of inadmissibility.

Section 212(a)(6)(C)(i) of the Act states:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

On appeal, counsel contests the director’s determination that the petitioner is inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel asserts that the petitioner’s participation in the marriage to her uncle was not willful or voluntary and cannot support a finding of willful fraud or misrepresentation that would trigger inadmissibility under section 212(a)(6)(C)(i) of the Act. Counsel maintains further that the petitioner made a timely retraction of any misrepresentation and, therefore, she cannot be found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. Counsel’s claims are not supported by the record.

In *Matter of G-G*, I&N Dec. 161 (BIA 1956), the BIA held that “fraud” consists of a false representation of a material fact made with knowledge of its falsity and with intent to deceive the immigration officer, who then acts upon his or her belief of the fraud. Willful misrepresentation occurs when the misrepresentation was deliberate and voluntary. *Forbes v. I.N.S.*, 48 F.3d 439, 442 (9th Cir. 1995). Proof of an intent to deceive is not required. *Id.* Rather, knowledge of the falsity of a representation is sufficient. *Id.*

On appeal, counsel contends that under the circumstances of her family’s pressure to comply with the scheme and being repeatedly raped by her uncle, the petitioner did not willfully or voluntarily enter the

fraudulent marriage with her uncle. We do not discount the trauma the petitioner experienced as a result of being raped by her uncle and the economic, familial and cultural pressures she faced. We also concur with the director's determination that the petitioner suffered substantial abuse as a result of her victimization. The relevant evidence of record, however, shows that the petitioner made material misrepresentations through her participation in a sham marriage with her uncle. The petitioner falsely represented the nature of her marriage by filing an adjustment of status application based on that marriage and appearing at the August 16, 2004 adjustment of status interview where she submitted documents and provided testimony to establish the bona fides of her marriage to her uncle. In her July 10, 2006 affidavit; March 28, 2008 statement and January 12, 2010 declaration, the petitioner does not deny that she participated in the fraudulent marriage and knew it was not bona fide. Rather, she explains how she was pressured to enter the marriage by her aunt and uncle. Her knowledge of the falsity of her material misrepresentation renders her inadmissible under section 212(a)(6)(C)(i) of the Act.

A timely retraction or recantation of the fraud or misrepresentation may prevent a finding of inadmissibility, but the retraction must be made without delay and voluntarily, before being confronted by a government official. *Valadez-Munoz v. Holder*, 623 F.3d 1304, 1309-10 (9th Cir. 2010). In this case, the record does not support counsel's assertion that the petitioner timely recanted her misrepresentations during the initial interview on her adjustment application. No evidence in the record indicates that the petitioner admitted to the sham marriage during her interview with a USCIS officer on August 16, 2004. Rather, the record shows that the petitioner did not admit the true circumstances of her marriage until nearly a year later when interviewed by USICE officers in July 2005 after USICE investigators went to her aunt and uncle's home and her uncle's workplace. According to the January 12, 2010 FBI letter that the petitioner submitted in response to the director's RFE, the petitioner's admissions regarding the sham marriage occurred in July 2005 in the presence of FBI and USICE officers. In her July 10, 2006 affidavit, the petitioner herself stated that she moved back to her aunt and uncle's home after an immigration officer had visited their home looking for her. She further attested that immigration officers went to her and her uncle's workplace to tell them to appear for another interview. She stated, "The day of our interview I initially said the marriage was valid. I finally could not take it anymore, though, and told the Immigration Officer that I was scared of my aunt and uncle." Accordingly, the evidence shows that the petitioner did not recant her misrepresentations until nearly a year after they were made to USCIS and only after being confronted by USICE officials. Thus, the petitioner's retraction of her misrepresentations was neither timely nor voluntary and the record shows that she is inadmissible under section 212(a)(6)(C)(i) of the Act. We find no error in the director's inadmissibility determination.

Regarding counsel's claims concerning the denial of the Form I-918 U petition without first issuing a Notice of Intent to Deny (NOID), we note that the regulations governing U nonimmigrant petitions at 8 C.F.R. § 214.14 do not require the director to issue a NOID before denying a petition. The regulation at 8 C.F.R. § 103.2(b)(8)(iii) also does not require the director to issue a NOID where eligibility has not been established. We do not concur with counsel that the director committed a procedural error by not issuing a NOID pursuant to 8 C.F.R. § 103.2(b)(16)(i) before denying the Form I-918 U petition. The regulation at 8 C.F.R. § 103.2(b)(16)(i) requires USCIS to notify the petitioner of any adverse evidence

it considers “of which the . . . petitioner is unaware.” The petitioner was aware of the information noted in the director’s February 23, 2010 denial of the Form I-192 waiver application because it was contained in the January 10, 2010 letter from the FBI that the petitioner had submitted in response to the director’s RFE. We, therefore, do not find that the director violated the regulation at 8 C.F.R. § 103.2(b)(16)(i). Even if we did find that such a procedural error occurred, it would have been harmless. Through the appeal process for the Form I-918 U petition, the petitioner has been afforded an opportunity to supplement the record and provide evidence addressing her inadmissibility under section 212(a)(6)(C)(i) of the Act, which she has done. The evidence she has submitted, however, does not establish that she is admissible to the United States because of the material misrepresentations she made to USCIS through the course of her adjustment application.

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 is inadmissible under section 212(a)(6)(C)(i) of the Act and her application to waive her ground of inadmissibility has been denied. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act pursuant to 8 C.F.R. § 214.1(a)(3).

ORDER: The appeal is dismissed.