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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



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FILE:



Office: VERMONT SERVICE CENTER

Date:

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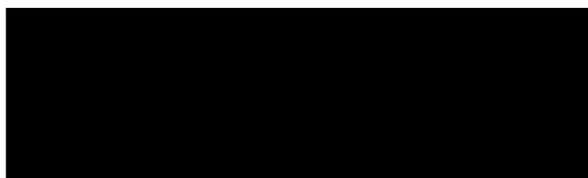
Petitioner:

Beneficiary:



PETITION: Petition for U Nonimmigrant Classification of a Qualifying Family Member of a U-1 Recipient Pursuant to Section 101(a)(15)(U)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(ii)

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 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 \$585. 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, approved the petitioner's U nonimmigrant status petition (Form I-918) but denied the Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) submitted by the petitioner on behalf of her daughter. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the matter will be returned to the director for further action.

The petitioner seeks nonimmigrant classification of her daughter under section 101(a)(15)(U)(ii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(U)(ii), as a qualifying family member of a U nonimmigrant.

The director denied the Form I-918 Supplement A because he determined that the petitioner's daughter was inadmissible and did not warrant a waiver of inadmissibility. The director consequently denied her Form I-192 (Application for Advanced Permission to Enter as a Nonimmigrant).

On appeal, counsel submits a new Form I-192 and additional evidence.

Section 101(a)(15)(U)(ii)(II) of the Act, provides, in pertinent part, for U nonimmigrant classification to the spouse and children of an adult alien granted U nonimmigrant status. A child is defined, in relevant part, as a child born in wedlock. Section 101(b)(1)(A) of the Act, 8 U.S.C. § 1101(b)(1)(A). The regulation at 8 C.F.R. § 214.14(f)(1) prescribes that to be eligible for derivative U nonimmigrant status, the petitioner must demonstrate both a *qualifying relationship with the beneficiary and that the qualifying family member is admissible to the United States.*

In this case, the petitioner has established that the beneficiary is her biological daughter born in wedlock who was unmarried and under 21 at the time the instant petition was filed. Because we lack jurisdiction to review the director's denial of the Form I-192 waiver, the sole issue on appeal is whether or not the beneficiary is admissible to the United States.

I. The Beneficiary's Inadmissibility

The record shows that the beneficiary has four criminal convictions as follows:

- 1) On January 18, 2007, the beneficiary was convicted of leaving the scene of an accident causing injury to another person, a felony offense in violation of section 20001(a) of the California Vehicle Code.¹ The beneficiary was sentenced to 12 months of imprisonment.
- 2) On April 3, 2007, the beneficiary was convicted of knowingly possessing a stolen motor vehicle, a misdemeanor offense in violation of section 496d(a) of the California Penal Code.² The beneficiary was sentenced to "60 days CJ, CTS 12."

¹ Superior Court of California, Southern Branch, San Mateo County, Case Number [REDACTED]

² Superior Court of California, Alameda County, Docket Number [REDACTED]

- 3) On June 8, 2007, the beneficiary was convicted of willful harm, injury or endangerment of a child, a misdemeanor offense in violation of section 273a(b) of the California Penal Code.³ The beneficiary was sentenced to nine months of imprisonment and placed under a no-contact and protection order.
- 4) On September 18, 2009, the beneficiary was convicted of illegally reentering the United States after removal, in violation of 8 U.S.C. § 1326.⁴ The beneficiary was sentenced to 12 months and one day of imprisonment.

The record shows that the beneficiary's offense of knowingly possessing a stolen vehicle involved moral turpitude. The Board of Immigration Appeals (BIA) has long held that knowing possession of stolen property is a crime involving moral turpitude. *See Matter of Salvail*, 17 I&N Dec. 19 (BIA 1979) (possession of stolen goods is a crime involving moral turpitude where the statute specifically requires knowledge that the goods were stolen); *but cf. Castillo-Cruz v. Holder*, 581 F.3d 1154, 1159 (9th Cir. 2009) (noting that receipt of stolen property with knowledge that it was stolen, but without the intent to permanently deprive the owner would not categorically involve moral turpitude). Accordingly, the beneficiary is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).⁵

The beneficiary is also inadmissible under: section 212(a)(9)(A)(ii) of the Act, as an alien who was previously ordered removed and who seeks admission within 10 years of her removal; section 212(a)(9)(C)(i)(I) of the Act, as an alien who departed the United States after accruing over a year of unlawful presence and who reentered the United States without being admitted; and section 212(a)(9)(C)(i)(II) of the Act, as an alien who was previously ordered removed and who reentered the United States without being admitted. On the Form I-918 Supplement A, the petitioner stated that the beneficiary entered the United States without inspection in 1994 when she was six years old. Accordingly, the beneficiary began accruing unlawful presence from October 29, 2005 (her eighteenth birthday) until her removal from the United States. U.S. Citizenship and Immigration Services (USCIS) records show that the beneficiary was removed from the United States on December 14, 2007 under order of the San Francisco Immigration Court, but that she illegally reentered the United States in 2009.⁶

³ Superior Court of California, Southern Branch, San Mateo County, Case Number [REDACTED]

⁴ U.S. District Court of Arizona, Case Number [REDACTED]

⁵ The record is insufficient to determine whether or not the beneficiary's other two convictions under California law constitute crimes involving moral turpitude. The Ninth Circuit Court of Appeals, within whose jurisdiction this case arose, has held that fleeing the scene of an accident under section 20001(a) of the California Vehicle Code is not categorically a crime involving moral turpitude. *Cerezo v. Mukasey*, 512 F.3d 1163 (9th Cir. 2008). Section 273a(b) of the California Penal Code (willful harm, injury or endangerment of a child) is also a divisible statute.

⁶ The beneficiary was again placed in removal proceedings on April 21, 2010 and her next hearing before the San Francisco Immigration Court is scheduled for October 14, 2010.

Accordingly, the beneficiary is inadmissible to the United States. Counsel does not contest the beneficiary's inadmissibility on appeal and submits no evidence or legal analysis to overcome the director's inadmissibility determination.

II. The Beneficiary's Request for a Waiver of Inadmissibility

To be eligible for derivative U nonimmigrant status, a qualifying family member who is inadmissible to the United States must be granted a waiver of any grounds of inadmissibility in accordance with the regulation at 8 C.F.R. § 212.17. 8 C.F.R. § 214.14(f)(1)(ii), (f)(3)(ii). In this case, the director determined that the beneficiary was statutorily eligible for derivative U nonimmigrant status, but denied the Form I-918 Supplement A solely on the ground that the beneficiary was inadmissible and had not established that she warranted a favorable exercise of discretion to waive her inadmissibility. The beneficiary's Form I-192 was accordingly denied. On appeal, counsel submits a new Form I-192 and supporting evidence. We have no jurisdiction to adjudicate a Form I-192 or to review the denial of a Form I-192 submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3). However, the regulation allows an applicant to re-file a request for a waiver of grounds of inadmissibility in appropriate cases. *Id.*

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). Here, that burden has been met as to the beneficiary's statutory eligibility for U nonimmigrant status, but the petitioner has failed to establish the beneficiary's eligibility under the regulatory requirement of admissibility at 8 C.F.R. § 214.14(f)(1)(ii). Accordingly, the appeal will be dismissed and the matter returned to the director for consideration of the beneficiary's newly filed Form I-192.

ORDER: The appeal is dismissed. Because the beneficiary is statutorily eligible for derivative U nonimmigrant classification, the matter is returned to the director for consideration of the newly submitted Form I-192.