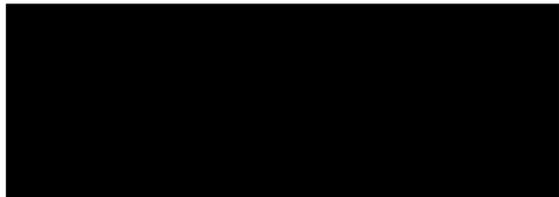


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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DATE: DEC 27 2011 Office: VERMONT SERVICE CENTER

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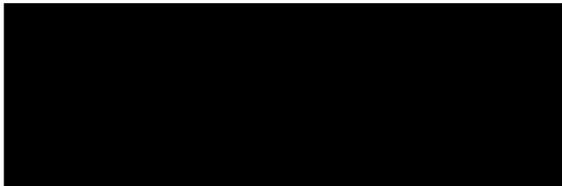


IN RE: Petitioner:



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)

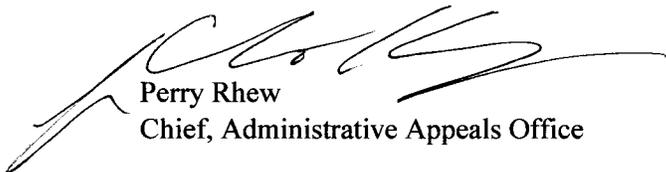
ON BEHALF OF PETITIONER:



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.

Thank you,



Perry Rhew
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 The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

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.

Applicable Law

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. 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.

Section 212(a) of the Act, 8 U.S.C. § 1182(a), sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

(2)(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 . . .

* * *

is inadmissible.

(ii) Exception. Clause (i)(I) shall not apply to an alien who committed only one crime if-

* * *

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(6)(A) Aliens Present Without Admission 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 [Secretary of Homeland Security], is inadmissible.

(6)(C) Misrepresentation.

(i) In general. 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.

Factual and Procedural History

The petitioner is a native and citizen of Poland who filed the Form I-918 U petition and the Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on November 7, 2008. The director issued a Request for Evidence (RFE) on December 22, 2009, asking the petitioner to submit the dispositions of her April 2008 arrest. The petitioner, through counsel, responded to the RFE. On March 28, 2011, 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 ineligible for U nonimmigrant status because she was inadmissible and her request for a waiver of inadmissibility had been denied. The petitioner timely appealed that denial. On appeal, counsel disputes that the three grounds of inadmissibility cited by the director apply to the petitioner.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4). Upon review of the record, we withdraw the director's determinations regarding the petitioner's inadmissibility under: section 212(a)(2)(A)(i)(I) of the Act, as an alien who has been convicted of a crime involving moral turpitude (CIMT); and section 212(a)(6)(A)(i) of the Act, as an alien present in the United States without being admitted or paroled. We shall return the matter to the director to clarify the petitioner's inadmissibility under section 212(a)(6)(C)(i) of the Act, as an alien who seeks to procure any benefit under the Act by fraud or misrepresentation.

Analysis

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 her inadmissibility. It appears, 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 Petitioner's Conviction is Not a CIMT

On October 10, 2008, the petitioner was convicted of possession of fraudulent identification documents in violation of 18 U.S.C. § 1028(a)(6).¹ She was sentenced to time served (approximately 169 days) and a \$50.00 fine. A conviction under 18 U.S.C. § 1028(a)(6) is not a CIMT because it relates to possession of a fraudulent document only, and does not include any intent on the individual's part to use, transfer or produce the fraudulent document. *See Matter of Serna*, 20 I&N Dec. 579 (BIA 1992). *See also Lagunas-Salgado v. Holder*, 584 F.3d 707, 712 (7th Cir. 2009) (distinguishing mere possession of an altered identity document from the knowing transfer of false documents and finding the latter crime to involve moral turpitude). Accordingly, we withdraw the director's determination that the petitioner is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a CIMT.²

The Petitioner Was Admitted to the United States as a Nonimmigrant

Records of USCIS indicate that the petitioner was admitted to the United States on November 7, 2005 as a B-2 nonimmigrant visitor. Accordingly, we withdraw the director's determination that the petitioner is inadmissible to the United States under section 212(a)(6)(A)(i) of the Act for being present in the United States without being admitted.

¹U.S. District Court, Southern District of Florida, Case No. [REDACTED]. An individual violates 18 U.S.C. § 1028(a)(6) when he or she:

knowingly possesses an identification document or authentication feature that is or appears to be an identification document or authentication feature of the United States or a sponsoring entity of an event designated as a special event of national significance which is stolen or produced without lawful authority knowing that such document or feature was stolen or produced without such authority. (West 2011)

² Even if the petitioner's conviction was a CIMT, it would meet the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act. Pursuant to 18 U.S.C. § 1028(b)(6) the maximum penalty for the petitioner's conviction would have been "a fine . . . or imprisonment for not more than one year, or both," and the petitioner was sentenced to time served, which amounted to a term of less than six months.

However, the record indicates that the petitioner remained in the United States beyond her period of authorized stay and is inadmissible under section 212(a)(7)(B)(i)(II) of the Act because she no longer possesses a valid nonimmigrant visa.

The Petitioner's Alleged Fraud/Misrepresentation Must be Further Clarified

The director found the petitioner inadmissible under section 212(a)(6)(C)(i) for seeking to obtain a benefit under the Act either by fraud or willfully misrepresenting a material fact.³ The director, however, failed to specify the petitioner's alleged misrepresentation or fraud. As the petitioner was not given notice of the evidence upon which the director found her to be inadmissible, we remand the matter for the director to notify the petitioner, through the issuance of an RFE, about the evidence that he determined established the petitioner's inadmissibility under section 212(a)(6)(C)(i) of the Act.

Conclusion

The petitioner has met the statutory eligibility requirements for U nonimmigrant classification and has established that she is not inadmissible under sections 212(a)(2)(A)(i)(I) and 212(a)(6)(A)(i) of the Act. However, the petitioner remains inadmissible under section 212(a)(7)(B)(i)(II) of the Act and the director has not articulated his basis for finding her inadmissible under section 212(a)(6)(C)(i) of the Act. Consequently, the matter must be remanded to the director for further action and issuance of a new decision addressing these issues. As always 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).

ORDER: The director's decision, dated March 28, 2011, is withdrawn and the matter remanded for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.

³ In *Matter of G-G*, I&N Dec. 161 (BIA 1956), the Board of Immigration Appeals (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.*