

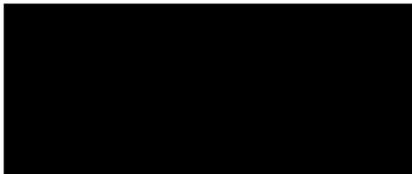
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

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**U.S. Citizenship  
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FILE:



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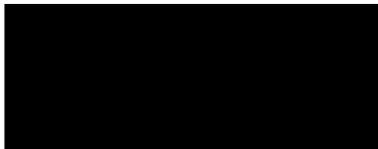
JAN 10 2011

IN RE: Petitioner:



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:



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 \$630. 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 petition remains 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 her request for a waiver of inadmissibility (Form I-192) was denied. On appeal, counsel submits a brief.

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[.]

In addition, U nonimmigrants must show that they are admissible to the United States, or that all inadmissibility grounds have been waived. See 8 C.F.R. § 214.1(a)(3)(i); 8 C.F.R. § 214.14(c)(2)(iv).

#### *Facts and Procedural Posture*

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Guatemala who claims to have entered the United States in September 1988. The petitioner was served with a notice to appear for removal proceedings in January 2008. On March 16, 2010, an immigration judge ordered the petitioner removed from the United States.

The petitioner concurrently filed the Form I-918 U petition and Form I-192 waiver application on April 25, 2008. On April 13, 2009, the director issued to the petitioner a Request for Evidence (RFE) relating only to the Form I-192 waiver application, and the petitioner, through counsel, responded to the RFE. On April 12, 2010, the director denied the Form I-192 waiver application as well as the Form I-918 U petition. In his decision on the Form I-918 U petition, the director stated that the petitioner was not

eligible for U nonimmigrant status because she was inadmissible and she was not eligible for a waiver of her inadmissibility grounds. On May 10, 2010, the petitioner filed a motion to reconsider the director's decision to deny the Form I-192 waiver application, as well as an appeal of the decision to deny the Form I-918 U petition.<sup>1</sup> On May 14, 2010, the director granted the petitioner's motion and affirmed his decision to deny the Form I-192 waiver application, determining that the petitioner did not warrant a favorable exercise of discretion.

### *The Petitioner's Inadmissibility*

For U nonimmigrant status, the regulations at 8 C.F.R §§ 212.17 and 214.14(c)(2)(iv) require the filing of a Form I-192 waiver 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 and 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 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 States.

The record indicates that the petitioner claims to have entered the United States in September 1988 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 petitioner's criminal history includes several convictions, all of which were listed in the director's May 14, 2010 decision on the petitioner's motion.<sup>2</sup> Specifically, on April 26, 2007, the

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<sup>1</sup> In her brief attached to the appeal of the Form I-918 U petition denial, counsel states that there are favorable factors in the petitioner's case that warrant the approval of the petitioner's Form I-192 waiver application. Counsel does not dispute that the petitioner is inadmissible under the grounds cited in the director's decision on the Form I-192 waiver application.

<sup>2</sup> The director stated in his May 14, 2010 decision that the petitioner was convicted of credit card theft on August 18, 1997 pursuant to an arrest by the Atlantic City Police Department, and found it to be a crime involving moral turpitude. The record contains no primary evidence of this arrest or conviction, and the petitioner was not given notice of it in the April 13, 2009 RFE. We, therefore, will not consider it for the

petitioner was sentenced to three years in prison, with all but nine months of the three years suspended, for her January 24, 2007 conviction of obtaining money by false pretense in violation of § 18.2-178 of the Virginia Penal Code.

Section 18.2-178 of the Virginia Penal Code states, in pertinent part:

A. If any person obtain, by any false pretense or token, from any person, with intent to defraud, money, a gift certificate or other property that may be the subject of larceny, he shall be deemed guilty of larceny thereof; or if he obtain, by any false pretense or token, with such intent, the signature of any person to a writing, the false making whereof would be forgery, he shall be guilty of a Class 4 felony.

VA Code Ann. § 18.2-178 (West 2010).

Under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), an alien is inadmissible if he or she has been convicted of a crime involving moral turpitude. The term “crime involving moral turpitude” is not defined in the Act or the regulations, but has been part of the immigration laws since 1891. *Jordan v. De George*, 341 U.S. 223, 229 (1951) (noting that the term first appeared in the Act of March 3, 1891, 26 Stat. 1084). The Board of Immigration Appeals (BIA) has explained that moral turpitude “refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.” *Matter of Franklin*, 20 I&N Dec 867, 868 (BIA 1994), *aff’d*, 72 F.3d 571 (8<sup>th</sup> Cir. 1995). A crime involving moral turpitude must involve both reprehensible conduct and some degree of scienter, be it specific intent, deliberateness, willfulness or recklessness. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689 n.1, 706 (A.G. 2008). When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *Id.* at 696; *Matter of L-V-C-*, 22 I&N Dec. 594, 603 (BIA 1999); *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989).

In this case, the record shows that the petitioner’s January 24, 2007 conviction for obtaining money by false pretense in violation of VA Penal Code § 18.2-178 was for a crime involving moral turpitude because the statute under which the petitioner was convicted expressly requires the intent to defraud. Crimes involving fraud categorically involve moral turpitude. *Jordan v. DeGeorge*, 341 U.S. at 232. Accordingly, based upon the petitioner’s conviction of obtaining money under false pretense in the Commonwealth of Virginia, she is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

The petitioner is also inadmissible under section 212(a)(2)(B) of the Act, as an alien with multiple convictions with aggregate sentences of five years or more.<sup>3</sup> On March 10, 2004, the petitioner was

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purpose of this decision, as it is not clear from the record whether such an arrest or conviction ever occurred.  
<sup>3</sup> The term “sentence” includes time suspended or withheld. Section 101(a)(48)(B) of the Act, 8 U.S.C. § 1101(a)(48)(B)..

convicted of being a habitual offender pursuant to VA Code § 46.2-357(B)(2) and sentenced to one year. On the same day, she was convicted of a second offense of Driving While Under the Influence (DUI) pursuant to VA Code § 18.2-266 and sentenced to one year. These two sentences, along with her three-year sentence for violating VA Code § 18.2-178A, render her inadmissible under section 212(a)(2)(B) of the Act.

*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, she is inadmissible under sections 212(a)(6)(A)(i), 212(a)(2)(A)(i)(I), and 212(a)(2)(B) of the Act and her application to waive her grounds 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.