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



U.S. Citizenship  
and Immigration  
Services



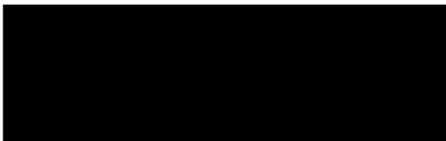
814

FILE:  Office: VERMONT SERVICE CENTER Date: JAN 26 2011

IN RE: 

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:

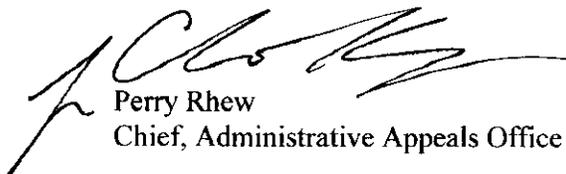


INSTRUCTIONS:

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.

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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be affirmed in part and withdrawn in part. 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 petitioner's Form I-192, Application for Advance Permission to Enter as Nonimmigrant, after declining to grant a waiver of the petitioner's inadmissibility to the United States. After making that determination, the director subsequently denied the instant petition based upon the petitioner's inadmissibility to the United States. On appeal, counsel submits a brief reasserting the petitioner's eligibility and letters attesting to the petitioner's good moral character.

*Applicable Law*

Section 101(a)(15)(U)(i) of the Act provides for U nonimmigrant classification to alien victims of certain qualifying criminal activity who: have suffered substantial physical or mental abuse as a result of having been victimized by the qualifying criminal activity; possess information concerning the qualifying criminal activity; have been, are, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity; and whose qualifying criminal activity violated the laws of the United States, or occurred in the United States or territories and possessions of the United States.

To be eligible for U nonimmigrant status, an alien must also be admissible to the United States, or be granted a waiver of inadmissibility pursuant to the regulations at 8 C.F.R. §§ 212(d)(3)(B), 212(d)(14), 214.1(a)(3)(i).

The regulation at 8 C.F.R. § 214.14(c)(2) states, in pertinent part, the following:

*Initial evidence.* Form I-918 must be filed with the following initial evidence:

\* \* \*

- (iv) If the petitioner is inadmissible, Form I-192, "Application for Advance Permission to Enter as Non-Immigrant," in accordance with 8 CFR 212.17.

With regard to the adjudication of a Form I-192, the regulation at 8 C.F.R. § 212.17(b)(3) states the following:

There is no appeal of a decision to deny a waiver. However, nothing in this paragraph is intended to prevent an applicant from re-filing a request for a waiver of ground of inadmissibility in appropriate cases.

*Facts and Procedural History*

The petitioner is a citizen of Mexico who states he entered the United States without inspection in 2000. He filed the instant Form I-918 on September 16, 2009. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including counsel's response to the request for additional evidence, the director denied the petition on January 29, 2010.

As noted, the director denied the Form I-918 because he had denied the Form I-192 waiver request. As set forth at 8 C.F.R. § 212.17(b)(3), we lack jurisdiction to review the director's denial of the Form I-192 waiver request. Accordingly, the sole issue before the AAO on appeal is whether or not the petitioner is admissible to the United States. Although counsel filed a timely appeal on March 3, 2010, she did not contest the petitioner's inadmissibility and submitted no evidence or legal analysis to overcome the director's inadmissibility determination, which is the only issue before us on appeal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO agrees with the director's determination that the petitioner is not admissible to the United States.

*The Petitioner's Inadmissibility*

As noted, the sole issue on appeal is the petitioner's inadmissibility to the United States; we have no jurisdiction over his request for a waiver of inadmissibility. The record establishes that the petitioner has the following five criminal convictions relevant to the question before us on appeal:

- On March 15, 2004, the petitioner was convicted of prostitution in violation of title 720, section 5/11-14 of the Illinois Compiled Statutes. He was sentenced to 12 months of probation and ordered to pay court costs.<sup>1</sup>
- On November 2, 2004, the petitioner was convicted of prostitution in violation of title 720, section 5/11-14 of the Illinois Compiled Statutes. He was sentenced to 30 days of imprisonment and 18 months of probation, and was ordered to pay court costs.<sup>2</sup>
- On April 1, 2008, the petitioner was convicted of prostitution in violation of title 720, section 5/11-14 of the Illinois Compiled Statutes. He was sentenced to 24 months of probation and ordered to pay court costs.<sup>3</sup>
- On October 9, 2008, the petitioner was convicted of solicitation to commit prostitution in

<sup>1</sup> The Circuit Court of the Tenth Judicial Circuit of Illinois, Peoria County, C

<sup>2</sup> The Circuit Court of the Tenth Judicial Circuit of Illinois, Peoria County, C

<sup>3</sup> The Circuit Court of the Tenth Judicial Circuit of Illinois, Peoria County, C

violation of a municipal ordinance. He was ordered to pay a \$500 fine and court costs.<sup>4</sup>

- On December 29, 2008, the petitioner was convicted of two counts of resisting a peace officer in violation of title 720, section 5/31-1 of the Illinois Compiled Statutes. He was sentenced to 90 days of imprisonment and 24 months of probation, and ordered to pay court costs.<sup>5</sup>

An alien is inadmissible to the United States under section 212(a)(2)(D)(i) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i), if that person has engaged in prostitution within ten years of the date of application for a visa, admission, or adjustment of status. As the petitioner's 2004 and 2008 convictions for prostitution occurred less than ten years before the instant petition was filed in 2009, they render him inadmissible to the United States under section 212(a)(2)(D)(i) of the Act.

The petitioner is also inadmissible to the United States under section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), as an alien who is present in the United States without having been admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General (now Secretary of Homeland Security).

We withdraw the director's determination that the petitioner is inadmissible to the United States under section 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I), as a controlled substance violator, as the record lacks evidence that the petitioner was ever convicted of having violated a law or regulation relating to a controlled substance.

As set forth above, the petitioner is inadmissible to the United States under subsections 212(a)(2)(A)(i)(I) and 212(a)(6)(A)(i) of the Act.

### *Conclusion*

The petitioner has failed to establish that he is admissible to the United States, and we have no jurisdiction to review the director's January 29, 2010 decision denying his request for a waiver of his inadmissibility. 8 C.F.R. § 212.17(b)(3). This petition, therefore, must remain denied. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). The petitioner has not sustained that burden and the appeal will be dismissed.

**ORDER:** The director's decision is affirmed in part and withdrawn in part. The appeal is dismissed.

<sup>4</sup> The Circuit Court of the Tenth Judicial Circuit of Illinois, Peoria County, Case

<sup>5</sup> The Circuit Court of the Tenth Judicial Circuit of Illinois, Peoria County, Case