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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
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U.S. Citizenship
and Immigration
Services

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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 Director, Vermont Service Center, revoked approval of the Petition for U Nonimmigrant Status (Form I-918 U petition) after proper notice, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition's approval will remain revoked.

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 revoked approval of the petition because the petitioner is not admissible to the United States and her Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) was denied.¹ On appeal, counsel submits the Form I-290B, Notice of Appeal, a memorandum of law and additional evidence. Counsel does not dispute the director's determination that the petitioner is inadmissible to the United States; counsel contends that the director abused his discretion and violated U.S. Citizenship and Immigration Services (USCIS) policy by *sua sponte* revoking the petition's approval. Counsel also contends that the director should favorably exercise his discretion and grant the petitioner's Form I-192.

We find that the director did not violate procedures or abuse his discretion when revoking the approval of the petition. The regulation at 8 C.F.R. § 214.4(h)(2)(B) provides for revocation after proper notice where the approval of the petition was in error. Counsel cites a USCIS policy memorandum² pertaining to approved Form I-360 self-petitions under the Violence Against Women Act (VAWA) for her contention that the director's decision to issue a Notice of Intent to Revoke (NOIR) absent new evidence is an abuse of discretion and arbitrary and capricious conduct on the part of the agency. However, the memorandum to which counsel refers relates only to approved VAWA petitions, not approved U nonimmigrant petitions. The director properly followed the regulation at 8 C.F.R. § 214.14(h)(2)(B) by issuing a NOIR on August 31, 2010 after determining that the approval of the Form I-918 U petition was in error. The record reflects that the petitioner failed to provide sufficient evidence regarding her conviction and prior removals from the United States as well as her aliases, all of which were discovered by USCIS only after approval of the petition.

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." The AAO does not have jurisdiction to review whether the director properly denied the Form I-192 waiver application; therefore, 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 beneficiary to be inadmissible and requiring an approved waiver pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

¹ The director originally approved the Form I-192 on March 9, 2010, but subsequently denied it after issuing a Notice of Intent to Revoke (NOIR) the petitioner's Form I-918 U petition on August 31, 2010.

² *Revocation of VAWA-Based Self-Petitions (Forms I-360); AFM Update AD10-49*, USCIS Memorandum (December 15, 2010).

On October 21, 1998, the beneficiary was convicted of distribution of marijuana in violation of the Colorado Revised Statutes (CRS) § 18-18-406(8)(b)(I). The beneficiary was sentenced to 18 months in jail. The beneficiary's distribution of marijuana conviction is a crime relating to a controlled substance and is a trafficking crime. Accordingly, the beneficiary is inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act, 8 U.S.C. §§ 1182(a)(2)(A)(i)(II) and 1182(a)(2)(C).

The petitioner is also inadmissible under section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), for being present in the United States without admission or parole; section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud; section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien who has been ordered removed from the United States; and section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed from the United States.³

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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)(2)(A)(i)(II), 212(a)(2)(C), 212(a)(6)(A)(i), 212(a)(6)(C)(i), 212(a)(9)(A)(ii) and 212(a)(9)(C)(i) of the Act and her Form I-192 has been denied. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3), and the appeal will be dismissed.

ORDER: The appeal is dismissed. Approval of the petition remains revoked.

³ While the petitioner claims that she last entered the United States as a nonimmigrant on April 1, 2002, the record reflects that the petitioner was last removed from the United States on November 19, 2002 and she has failed to provide evidence that she was subsequently inspected, admitted or paroled into the United States. The petitioner was also removed from the United States on April 15, 1999. Additionally, the petitioner sought entry into the United States by presenting fraudulent documentation at the port of entry on September 22, 1996 and June 6, 2002.