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



**U.S. Citizenship
and Immigration
Services**

D14



Date: **OCT 04 2011** Office: VERMONT SERVICE CENTER File:

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 \$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, denied the Petition for U Nonimmigrant Status (Form I-918 U petition) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain 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 Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) was denied. On appeal, counsel submits a brief statement on the Form I-290B, Notice of Appeal, and additional evidence. Counsel does not dispute the director's determination that the petitioner is inadmissible to the United States; his arguments relate solely to why the director should favorably exercise his discretion and grant the beneficiary's Form I-192.

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).

The record contains evidence of the petitioner's following convictions:

- September 10, 1997- pled guilty and sentenced to three years probation for violating section 28-604(1)(3) of the Nebraska Code (possession of a forged instrument); April 10, 1998- probation revoked and sentenced to 18 to 24 months in jail.
- September 2, 1999- pled guilty and sentenced to nine days in jail for prostitution: solicit.
- June 22, 2000- pled guilty and sentenced to ten days in jail for prostitution: solicit.
- December 23, 2002 – pled guilty and sentenced to a fine for violating section 28-441 of the Nebraska Code (possession/use of drug paraphernalia).
- February 27, 2003 – pled guilty and sentenced to six months in jail for violating sections 28-416(3) and 28-201(4)(e) of the Nebraska Code (attempted possession of a controlled substance, not marijuana).
- January 31, 2008- pled no contest, found guilty and sentenced to sixty days in jail and two years of probation for violating sections 28-517 and 28-201 of the Nebraska Code (attempted theft by receiving stolen property \$500-\$1500).

Based upon the petitioner's convictions for soliciting prostitution and possession of a forged instrument, crimes involving moral turpitude, she is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). The petitioner is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for her convictions relating to a controlled substance (possession/use of drug paraphernalia and attempted possession of a controlled substance, not marijuana).

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)(I) and 212(a)(2)(A)(i)(II) 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).

ORDER: The appeal is dismissed. The petition remains denied.