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

U.S. Citizenship and Immigration Services

[redacted]

D14

Date: OCT 04 2011 Office: VERMONT SERVICE CENTER File: [redacted]

IN RE: Petitioner: [redacted]

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:

[redacted]

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 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 and additional evidence.[1] Counsel does not dispute the director's determination that the petitioner is inadmissible to the United States; her 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:

- August 15, 1990- pled guilty and sentenced to one year probation for violating section 750.356d of the Michigan Penal Code (retail fraud).
- October 31, 1991- pled guilty and sentenced to 18 months probation for violating section 750.356c of the Michigan Penal Code (retail fraud).
- June 27, 1994- pled guilty and sentenced to 90 days in jail and one year probation for violating section 750.356d of the Michigan Penal Code (retail fraud-habitual offender).
- January 22, 1998- pled guilty to, adjudication withheld, and sentenced to five years probation for violating section 812.014(2)(c)(1) of the Florida Statutes (felony grand theft); July 10, 2000- found guilty on probation violation with probation reinstated for an additional one year period.
- November 9, 1999- pled guilty and sentenced to one year probation for violating section 893.147(1) of the Florida Statutes (possession of drug paraphernalia); July 10, 2000- found guilty on probation violation with probation reinstated for an additional six month period.

[1]Although counsel asserts in her appellate brief that the petitioner is filing a new Form I-192 with the appeal, a review of the record and U.S. Citizenship and Immigration Services (USCIS) systems does reveal the filing of a second Form I-192 pursuant to 8 C.F.R. § 103.2(a).

- March 27, 2000- pled nolo contendere, found guilty, and sentenced to six months probation for violating section 812.015 of the Florida Statutes (retail theft).

- July 10, 2000- pled guilty and sentenced to an additional six months probation added to prior possession of drug paraphernalia conviction for violating section 893.147(1) of the Florida Statutes (possession of drug paraphernalia).

- August 21, 2006- pled guilty and sentenced to two years probation for violating section 893.13 of the Florida Statutes (possession of cocaine).

- November 9, 2007- pled guilty and sentenced to 90 days jail for violating section 893.13(a) of the Florida Statutes (possession of cocaine).

Based upon the petitioner's convictions for retail fraud and grand theft, crimes categorically 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 of drug paraphernalia and cocaine).

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.