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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



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



B14

Date: **AUG 28 2012** Office: VERMONT SERVICE CENTER

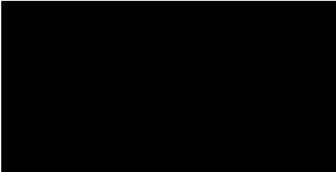


IN RE: Petitioner:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 (the director), dismissed the nonimmigrant 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)(i) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

Section 101(a)(15)(U)(i) of the Act, provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

The director denied the Form I-918 because the petitioner is inadmissible to the United States and her request for a waiver of inadmissibility (Form I-192, Application for Advance Permission to Enter as Nonimmigrant) had been denied.

On appeal, counsel concedes the petitioner’s inadmissibility, but claims the director improperly found that the petitioner did not merit a waiver of inadmissibility.

All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 application in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility. There is no appeal of a decision to deny a waiver. 8 C.F.R. § 212.17(b)(3). As the AAO does not have jurisdiction to review whether the director properly denied the petitioner’s Form I-192 waiver application, the AAO cannot address counsel’s claims regarding why the petitioner’s waiver request 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 Form I-192 waiver application in order to be granted U nonimmigrant status.

The Petitioner’s Inadmissibility

The record shows that the petitioner entered the United States without inspection and she is consequently inadmissible under section 212(a)(6)(A)(i) of the Act as an alien present in the United States without being admitted or paroled.

On November 4, 2009, the petitioner was convicted of three criminal offenses pursuant to her guilty plea:¹ 1) delivery of methamphetamine in violation of section 475.890 of the Oregon Revised Statutes (ORS); 2) delivery of marijuana within 1,000 feet of a school in violation of ORS § 475.862; and 3) first degree child neglect in violation of ORS § 163.547. On all three counts, the petitioner

¹ Circuit Court of Oregon, Marion County, Case No. 09C48617 (Nov. 4, 2009).

was sentenced to 16 to 18 months imprisonment followed by 36 months of probation. On March 31, 2010, the petitioner was convicted of violating her probation and was sentenced to 14 days imprisonment in addition to the remainder of her original 36 month term of probation. The instant Form I-918 U petition was filed on October 29, 2010.

The petitioner's criminal offenses render her inadmissible under section 212(a)(2)(C)(i) of the Act as a controlled substance trafficker; section 212(a)(2)(A)(i)(II) of the Act as an alien convicted of violating state laws relating to controlled substances; and section 212(a)(2)(A)(i)(I) of the Act as an alien convicted of a crime involving moral turpitude.

Counsel does not contest the beneficiary's inadmissibility on appeal, but contends that the director erroneously denied her waiver request because the petitioner has rehabilitated and does not pose a risk to society. The director denied the petitioner's application for a waiver of inadmissibility and the AAO has no jurisdiction to review that decision. 8 C.F.R. § 212.17(b)(3).

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 has not established that she is admissible to the United States or that her grounds of inadmissibility have been waived. 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)(i).

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