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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

D14

[redacted]

DATE: FEB 16 2012 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]

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:

[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 $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 ("the director"), denied the nonimmigrant visa 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.

Applicable Law

Section 101(a)(15)(U) 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.

Section 212(a) of the Act, 8 U.S.C. § 1182(a), sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

(2)(A) Conviction of certain crimes.

> (i) In general. Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . .
> >
> > * * *
>
> is inadmissible.

(6)(A) Aliens Present Without Admission or Parole.

> (i) In general. An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the [Secretary of Homeland Security], is inadmissible.

(7)(B) Documentation requirements. Nonimmigrant.

> (i) In general.-Any nonimmigrant who-
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> > (I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated

> initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period . . .
>
> * * *

is inadmissible.

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 an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

Factual and Procedural History

The petitioner is a native and citizen of Guatemala who claims to have entered the United States in June 2005 at the age of 14 without being inspected or admitted by an immigration officer. The petitioner filed the Form I-918 U petition on June 23, 2008. On August 7, 2008, the petitioner filed his first Form I-192. The director issued a Request for Evidence (RFE) on August 5, 2010, asking the petitioner to submit the disposition of his 2008 arrest. The petitioner, through counsel, responded to the RFE with additional evidence, including a second Form I-192. On March 22, 2011, the director denied both Form I-192 applications. On April 15, 2011, the director denied the Form I-918 U petition because the applicant was inadmissible and his Forms I-192 were denied.[1]

The petitioner has timely appealed the denial of his Form I-198 U petition and on appeal counsel submits a brief. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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." As the AAO does not have jurisdiction to review whether the director properly denied the Form I-192 application, the AAO does not consider whether approval of the Form I-192 application 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 application pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

Analysis

The director found the petitioner inadmissible under: section 212(a)(2)(A)(i)(I) of the Act, as an alien who has been convicted of a crime involving moral turpitude (CIMT); section 212(a)(6)(A)(i) of the Act, as an alien present in the United States without admission or parole;

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[1] The director did not find the petitioner ineligible for U nonimmigrant status for any reason other than his inadmissibility. Thus, it appears that the director determined that the petitioner met all the statutory eligibility criteria for U nonimmigrant status, but concluded that he could not be granted such status because he was found to be inadmissible and ineligible for a waiver of inadmissibility.

and section 212(a)(7)(B)(i)(I) of the Act as a nonimmigrant not in possession of a valid passport. On appeal, counsel does not dispute the petitioner's inadmissibility but instead focuses her assertions on why the director should have favorably exercised his discretion and approved the Form I-192. As stated earlier, the AAO does not have jurisdiction to consider whether the Form I-192 should have been approved. 8 C.F.R. § 212.17(b)(3). The AAO can only determine whether the inadmissibility grounds noted by the director apply to the petitioner. A review of the record demonstrates the petitioner's inadmissibility under the grounds cited by the director and the appeal shall be dismissed.

The Petitioner's Conviction Is a CIMT

On December 10, 2009, the petitioner's plea of guilty to the offense of aggravated kidnapping was deferred without adjudication and he was placed under community supervision for 10 years for violating section 20.04 of the Texas Penal Code (T.P.C.).[2] The petitioner's deferred guilty plea is a conviction for immigration purposes. Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A). *See Moosa v. I.N.S.*, 171 F.3d 994, 1006-10 (5th Cir. 1999) (guilty plea under Texas deferred adjudication statute is a conviction for immigration purposes). Aggravated kidnapping under T.P.C. § 20.04 categorically involves moral turpitude because it requires the intentional or knowing abduction of a person with the use or display of a deadly weapon. *See Matter of P-*, 5 I&N Dec. 444 (BIA 1953) (kidnapping inherently involves moral turpitude). Accordingly, the petitioner is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a CIMT.

The Petitioner is Present in the United States without Permission or Parole

The petitioner asserted on the Form I-918 U petition that he entered the United States in June 2005 without being inspected or admitted by an immigration officer. He is, therefore, inadmissible under section 212(a)(6)(A)(i) of the Act for being present in the United States without being admitted or paroled.

The Petitioner does Not Possess a Valid Passport

On August 7, 2008, the petitioner filed an Application to Waive the Passport/Visa Requirements (Form I-193), which USCIS denied on March 22, 2011. The petitioner is, therefore,

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[2] 275th Judicial District Court of Hidalgo County, Texas, Case No. CR-2743-09-E. T.P.C. § 20.04 (West 2012) provides:

(a) A person commits an offense [of aggravated kidnapping] if he intentionally or knowingly abducts another person with the intent to:
(1) hold him for ransom or reward;
(2) use him as a shield or hostage;
(3) facilitate the commission of a felony or the flight after the attempt or commission of a felony;
(4) inflict bodily injury on him or violate or abuse him sexually;
(5) terrorize him or a third person; or
(6) interfere with the performance of any governmental or political function.
(b) A person commits an offense if the person intentionally or knowingly abducts another person and uses or exhibits a deadly weapon during the commission of the offense.

inadmissible under section 212(a)(7)(B)(i)(I) of the Act because he does not possess a valid passport.

Conclusion

As always 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). The petitioner has met the requirements of section 101(a)(15)(U)(i) of the Act, but has failed to establish his admissibility, as required for U nonimmigrant classification pursuant to section 212(d)(14) of the Act and the regulations at 8 C.F.R §§ 212.17, 214.1(a)(3)(i), 214.14(c)(2)(iv).

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