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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**



814

Date: **JUL 16 2012** 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)

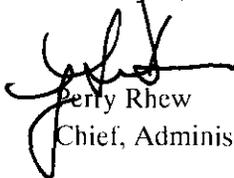
ON BEHALF OF PETITIONER: Self-represented

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”), 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.

Section 101(a)(15)(U)(i) of the Act, provides for U nonimmigrant classification to aliens who have suffered substantial physical or mental abuse as a result of having been the victim of certain criminal activity and who assist government officials in investigating or prosecuting such criminal activity. Section 212(d)(14) of the Act 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 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, the petitioner submits a Notice of Appeal (Form I-290B), a brief and additional evidence. The petitioner does not dispute the director’s determination that she is inadmissible to the United States. Instead, the petitioner asserts that she merits a favorable exercise of discretion to waive her grounds 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. 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 the petitioner’s arguments on appeal that the Form I-192 waiver application should have been granted and that the petitioner merits a favorable exercise of discretion. The only issue before the AAO on appeal is whether the director was correct in finding the petitioner to be inadmissible and requiring an approved waiver pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

The record shows that the petitioner was convicted of crimes involving moral turpitude, rendering her inadmissible under section 212(a)(2)(A)(i)(I) of the Act. On July 14, 2009, the Superior Court of Arizona, Maricopa County, granted the petitioner’s motion to set aside judgments of conviction and dismissal of charges in regard to two counts of forgery in violation of section 13-2002(A)(3) of the Arizona Revised Statutes (A.R.S.) and four counts of taking the identity of another in violation of

section 13-2008(A) of the A.R.S.¹

The term “crime involving moral turpitude” is not defined in the Act or the regulations, but has been part of the immigration laws since 1891. *Jordan v. De George*, 341 U.S. 223, 229 (1951) (noting that the term first appeared in the Act of March 3, 1891, 26 Stat. 1084). The Board of Immigration Appeals (BIA) has explained that moral turpitude “refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.” *Matter of Franklin*, 20 I&N Dec 867,868 (BIA 1994), *aff’d*, 72 F.3d 571 (8th Cir. 1995). A crime involving moral turpitude must involve both reprehensible conduct and some degree of scienter, be it specific intent, deliberateness, willfulness or recklessness. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689 n.1, 706 (A.G. 2008).

The petitioner’s forgery offenses involved moral turpitude because the statute under which the petitioner was convicted involved forgery and the intent to defraud. *See Jordan v. DeGeorge*, 341 U.S. 223, 232 (1951); *Matter of Flores*, 17 I&N Dec. 225, 228 (BIA 1980). *See Matter of Seda*, 17 I. & N. Dec. 550 (BIA 1980), Georgia; *Animashaun v. INS*, 990 F.2d 234 (5th Cir. 1993), Alabama Criminal Code; *Balogun v. Ashcroft*, 270 F.3d 274 (5th Cir. 2001); *Morales-Carrera v. Ashcroft*, 74 F.3d Appx. 324 (5th Cir. 2003).

The petitioner’s convictions for taking the identity of another may or may not involve moral turpitude because the statute under which the petitioner was convicted encompasses conduct that does and does not involve moral turpitude; however, as discussed above the petitioner has failed to provide sufficient evidence to establish whether these convictions are crimes involving moral turpitude and, on appeal, the petitioner does not contest that her convictions under A.R.S. § 13-2008(A) involved moral turpitude. Accordingly, we find no error in the director’s determination that the petitioner is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of two crimes involving moral turpitude (totaling six counts).

The petitioner is also inadmissible under subsections 212(a)(6)(A)(i) and (a)(7)(B)(i)(I) of the Act, 8 U.S.C. §§ 1182(a)(6)(A)(i) and (a)(7)(B)(i)(I), for being present in the United States without admission or parole, and not possessing a valid passport.²

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). Even if

¹ Even though the judgments of conviction were set aside and the charges were dismissed in all of the petitioner’s cases, they are still convictions for immigration purposes because the petitioner was originally judged guilty, was placed on probation, and received at least 6 months in jail. *See Section 101(a)(48) of the Act.*

² The petitioner claims that she entered the United States without inspection, admission or parole in June 2001.

the petitioner had met the statutory eligibility requirements for U nonimmigrant classification, she is inadmissible under subsections 212(a)(2)(A)(i)(I), (a)(6)(A)(i), and (a)(7)(B)(i)(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).

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