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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

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Date: **MAY 09 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)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(i)

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 \$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, 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)(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 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, 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 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.¹ On appeal, counsel submits a brief and additional evidence. Counsel does not dispute the director's determination that the petitioner is inadmissible to the United States. Instead, counsel asserts that the petitioner 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. There is no appeal of a decision to deny a Form I-192 waiver application. 8 C.F.R. § 212.17(b)(3). Consequently, the AAO lacks jurisdiction to review whether the director properly denied the Form I-192 waiver application. 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 the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

The record shows that the petitioner was convicted of two crimes involving moral turpitude, rendering her inadmissible under section 212(a)(2)(A)(i)(I) of the Act. [REDACTED] the petitioner was convicted of petty theft in violation of section 484(a) of the California Penal Code (CPC) and was sentenced to three days in jail and 24 months of probation. On January 12, 1996, the petitioner was

¹ The director also determined that the petitioner had not suffered substantial physical or mental abuse as a result of her victimization. However, the director did not state the basis for his determination. We do not reach this issue on appeal, as the record demonstrates that the petitioner remains ineligible for U nonimmigrant classification because she is inadmissible to the United States and her request for a waiver was denied.

convicted of failure to disclose the origin of a recording or audiovisual work in violation of CPC § 653w(a).² The petitioner was sentenced to two years in jail and ordered to pay \$69,951 in restitution.

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 theft offense involved moral turpitude. *See Mendoza v. Holder*, 623 F.3d 1299, 1304 (9th Cir. 2010); *U.S. v. Esparza-Ponce*, 193 F.3d 1133, 1136 (9th Cir. 1999) (noting the broad concurrence among the circuit courts that petty theft involves moral turpitude).

The petitioner’s conviction for failure to disclose the origin of a recording or audiovisual work also involved moral turpitude. Crimes that have a specific intent to defraud as an element have always been found to involve moral turpitude. *Jordan v. DeGeorge*, 341 U.S. at 232; *Matter of Flores*, 17 I&N Dec. 225, 228 (BIA 1980). However, moral turpitude also inheres in crimes that involve inherently deceptive conduct and that result in the impairment of governmental functions or other significant societal harm, whether or not the specific intent to defraud is an element of the crime. *See Matter of Kochlani*, 24 I&N Dec. 128, 130-131 (BIA 2007); *Matter of Jurado*, 24 I&N Dec. 29, 35 (BIA 2006); *see also Rodriguez v. Gonzales*, 451 F.3d 60, 64-65 (2d Cir. 2006); *Carty v. Ashcroft*, 395 F.3d 1081, 1084-85 (9th Cir. 2005).

Although CPC § 653w lacks the specific intent to defraud, it requires inherently deceptive conduct that impairs state governmental functions. *See Anderson v. Nidorf*, 26 F.3d 100, 103-04 (9th Cir. 1994) (determining that CPC § 653w was not unconstitutionally overbroad as it was narrowly tailored to the government’s antipiracy and consumer protection interests). The record of conviction shows that the petitioner pled guilty to the following charge in the indictment: “willfully, unlawfully and knowingly advertise and offer for sale and resale . . . for commercial advantage and private financial gain, a recording and audiovisual work, where the outside cover box or jacket did not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer or group.” In the transcript of the petitioner’s guilty plea, the court further notified the petitioner that she was being ordered to pay restitution over

² A person is guilty of failure to disclose the origin of a recording or audiovisual work when, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale or resale, or rents, or manufactures, or possesses for these purposes, any recording or audiovisual work, the outside cover box or jacket of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group. Cal. Penal Code § 653w(a) (West 1996).

\$69,000 and that the money and tapes seized at her home would be returned to [REDACTED]. The record thus indicates that the petitioner's conviction under CPC § 653w involved the willful, unlawful and knowing sale of illegally duplicated recordings and audiovisual works that failed to clearly and conspicuously disclose the identity of the actual manufacturer and producer. On appeal, counsel does not contest that the petitioner's conviction under CPC § 653w involved moral turpitude. 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.

Beyond the director's decision, the petitioner is also inadmissible under sections 212(a)(6)(A) and 212(a)(9)(A) of the Act, 8 U.S.C. §§ 1182(a)(6)(A) and 1182(a)(9)(A), for being present in the United States without admission or parole and for having been ordered removed from the United States.³

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 AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, counsel has failed to establish the petitioner's admissibility and eligibility for U nonimmigrant classification. The petitioner is inadmissible under subsections 212(a)(2)(A)(i)(I), (a)(6)(A) and (a)(9)(A) of the Act and her Form I-192 waiver application has been denied. She is consequently ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i), and the appeal shall be dismissed.

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

³ The petitioner entered the United States without admission or parole on December 6, 1991. The petitioner was ordered removed from the United States on November 15, 1999.