

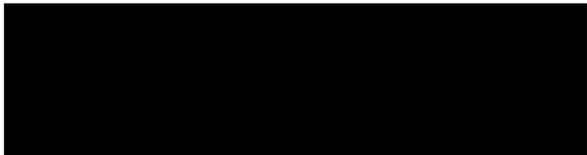
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

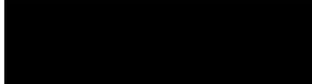


U.S. Citizenship  
and Immigration  
Services

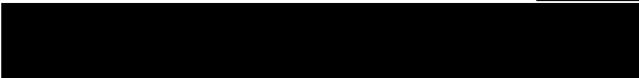
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Date: Office: VERMONT SERVICE CENTER FILE: 

**MAY 09 2012**

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:

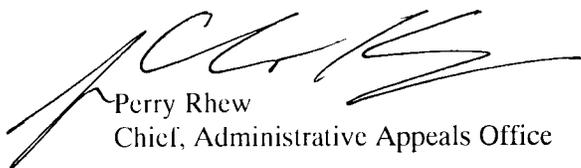


INSTRUCTIONS:

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 with the field office or service center that originally decided your case by filing a 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 U 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 U nonimmigrant classification to alien victims of certain qualifying criminal activity and their qualifying family members. Section 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1), states:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

Pursuant to the regulations, the petitioner also must show that “since the initiation of cooperation, [she] has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3). This regulatory provision “exclude[s] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested.” *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). If the petitioner “only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered.” *Id.*

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

(i) Form I-918, Supplement B, "U Nonimmigrant Status Certification," signed by a certifying official within the six months immediately preceding the filing of Form I-918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been

specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

In addition, like all other nonimmigrants, petitioners for U classification 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.

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

#### *Factual and Procedural History*

The petitioner is a native and citizen of Colombia who claims to have initially entered the United States in 1988, with her last entry occurring in 1992. On September 22, 2009, the petitioner filed a Form I-918 U petition without an accompanying *U Nonimmigrant Status Certification* (Form I-918 Supplement B). In November 2009, the petitioner's former counsel supplemented the record by submitting a photocopy of a Form I-918 Supplement B that was signed by a detective with the Huntington Beach, California Police Department. The director subsequently issued two Requests for Evidence (RFE) to obtain, in part, a properly completed Form I-918 Supplement B with an original signature of the certifying official, as well as an explanation by the certifying official regarding the petitioner's helpfulness to the investigation or prosecution of the qualifying criminal activity. In response, the petitioner submitted a second Form I-918 Supplement B. The director denied the petition because the petitioner is inadmissible to the United States and her request for a waiver of inadmissibility was denied and because the certifying official indicated on the Form I-918 Supplement B that the petitioner did not continue to remain helpful to the investigation or prosecution of the qualifying criminal activity.. On appeal, the petitioner states that she was helpful to law enforcement authorities and claims that her inadmissibility is due to convictions that resulted from the abuse she suffered at the hands of her former boyfriend.

*Analysis*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find no error in the director's decision to deny the petition.

The record contains two law enforcement certifications. The petitioner's first Form I-918 Supplement B, dated November 11, 2009, was signed by a detective with the Huntington Beach, California Police Department. Although the detective indicated at Part 4 that the petitioner was helpful in the investigation of the qualifying domestic violence criminal activity, this Form I-918 Supplement B does not conform to the regulatory requirements at 8 C.F.R. § 214.14(c)(2)(i) in that it was signed and dated by the certifying official after the filing of the Form I-918 U petition, and did not contain the name of the head of the certifying agency at Part 2. In addition, the regulation at 8 C.F.R. § 103.2(a)(2) provides for the general requirement that all petitions must contain an original signature; however, this Form I-918 Supplement B is only a photocopy. Accordingly, the first Form I-918 Supplement B that the petitioner submitted, dated November 11, 2009, was insufficient as it did not meet the regulatory requirements..

The petitioner's second Form I-918 Supplement B was signed on October 20, 2010 by a lieutenant with the Huntington Beach, California Police Department. The lieutenant indicated at Part 4 that the petitioner was not helpful in the investigation or prosecution of the qualifying domestic violence criminal activity. At Part 5, the lieutenant wrote: "[The petitioner] continued to live with her domestic partner after reported crime. Said 'I love him.' Case rejected by D.A." In response to the director's request for clarification from the certifying official regarding the petitioner's continued helpfulness to law enforcement authorities, the certifying official wrote: "This case never went to court because based on reports, the victim . . . picked up her boyfriend the same day as the incident from the hospital and told officers . . . 'I love him' regarding the suspect . . . . They went home together."

In his denial decision, the director noted that the petitioner had a responsibility to provide ongoing cooperation with law enforcement authorities in their investigation or prosecution of qualifying criminal activity, and that although it appeared she had initially been cooperative, the evidence in the record failed to demonstrate the petitioner's continuing assistance to law enforcement authorities. On appeal, the petitioner states that despite telling the police that she loved her former boyfriend and went home with him, she provided a full account of his violent behavior towards her and fully supported his prosecution. She states further that her feelings towards her former boyfriend are irrelevant to whether she assisted the police and that it is common for domestic violence victims to be emotionally dependent upon their abusers.

The evidence in the second Form I-918 Supplement B, dated October 20, 2010, does acknowledge the petitioner's initial cooperation with law enforcement authorities in that she provided information to the police and permitted the police to photograph her injuries. However, this Form I-918 Supplement B is not a law enforcement certification described at section 214(p)(1) of the Act because the certifying official indicated that the petitioner did not provide ongoing assistance in the investigation or prosecution of the domestic violence incident that she reported. As stated earlier, the regulation at

8 C.F.R. § 214.14(b)(3) requires the petitioner to show that “since the initiation of cooperation, [she] has not refused or failed to provide information and assistance reasonably requested.” The regulation provides an exception to the helpfulness requirement only for victims under the age of 16 or victims unable to assist in the investigation or prosecution because they are incapacitated or incompetent. 8 C.F.R. § 214.14(b)(3). Here, the certifying official indicated at Parts 4.2 and 4.3 that the petitioner had not been, was not being, or was not likely to be helpful to law enforcement authorities in the investigation or prosecution of the domestic violence crime. The record contains no indication that the certifying agency’s requests were unreasonable, or that the petitioner was incapacitated or incompetent at the time her assistance was requested. Accordingly, the petitioner’s refusal to assist with the certifying agency’s reasonable efforts to investigate or prosecute the qualifying criminal activity precludes satisfaction of the regulatory requirement. Consequently, the petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3).

Beyond the director’s decision, even if the Form I-918 Supplement B had provided evidence of the petitioner’s ongoing helpfulness to law enforcement authorities, it would have been insufficient to establish her eligibility for U nonimmigrant status. According to the regulation at 8 C.F.R. § 214.14(c)(2)(i), a petitioner must submit a Form I-918 Supplement B as initial evidence that is “signed by the certifying official within the six months immediately preceding the filing of [the Form I-918 U petition].” The Form I-918 Supplement B that the director addressed in his denial decision was dated December 20, 2010, more than one year after the filing of the Form I-918 U petition. Thus, the Form I-918 U petition may not be approved due to the petitioner’s failure to submit required initial evidence as specified by the regulation at 8 C.F.R. § 214.14(c)(2)(i).<sup>1</sup>

The director also denied the petition because the petitioner is inadmissible to the United States under: section 212(a)(9)(B)(i)(II) of the Act as an alien unlawfully present; and section 212(a)(2)(A)(i)(I) of the Act as an alien convicted of a crime involving moral turpitude. The record shows that on July 11, 2008, the petitioner was convicted of two counts of petty theft in violation of sections 484(a) and 488 of the California Penal Code (CPC) and two counts of second degree burglary in violation of CPC § 459-460(b). On August 26, 2008, the petitioner was again convicted of second degree burglary and theft with a prior conviction in violation of CPC §§ 666, 484(a), 488 and was sentenced to one year and four months imprisonment. We find no error in the director’s determination that the petitioner’s criminal convictions render her inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Theft, even petty, is a crime involving moral turpitude. *See Mendoza v. Holder*, 623 F.3d 1299, 1304 (9<sup>th</sup> Cir. 2010); *U.S. v. Esparza-Ponce*, 193 F.3d 1133, 1136 (9<sup>th</sup> Cir. 1999) (noting the broad concurrence among the circuit courts that petty theft involves moral turpitude). The petitioner’s second-degree burglary offenses also involved moral turpitude because the record of conviction shows that the petitioner was convicted of

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<sup>1</sup>An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003).

burglary with the intent to commit theft. *See Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013, 1020 (9<sup>th</sup> Cir. 2005); *Matter of Frentescu*, 18 I&N Dec. 244, 245 (BIA 1982) (“Burglary with intent to commit theft is a crime involving moral turpitude.”). The record also shows that the petitioner claims to have entered the United States in February 1988 as a nonimmigrant tourist where she remained beyond her period of authorized stay and then left the United States for a brief trip to Mexico in 1992. She is consequently inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for more than one year, and inadmissible under section 212(a)(9)(C)(i) of the Act for entering the United States in 1992 without being inspected, admitted or paroled after having been unlawfully present in the United States for more than one year.

On appeal, the petitioner states that she committed her crime as a result of the abuse she suffered from her former boyfriend and that she cannot establish her rehabilitation because she is still detained. The petitioner does not, however, contest her inadmissibility nor deny her criminal convictions. The director denied the petitioner’s Form I-192 waiver application and we have no jurisdiction to review that denial. *See* 8 C.F.R. § 212.17(b)(3) (No appeal lies from the denial of a waiver request.). Consequently, the petitioner remains ineligible for U nonimmigrant classification due to her inadmissibility.

#### *Conclusion*

The petitioner failed to submit the certification required by section 214(p)(1) of the Act. The petitioner is also inadmissible to the United States and her request for a waiver of inadmissibility was denied. The petitioner is consequently ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed. 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). Here, that burden has not been met.

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