

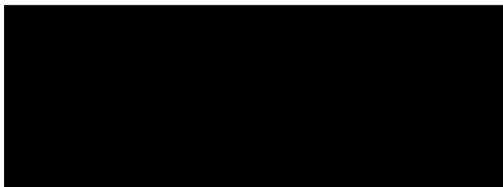
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **MAY 16 2012**

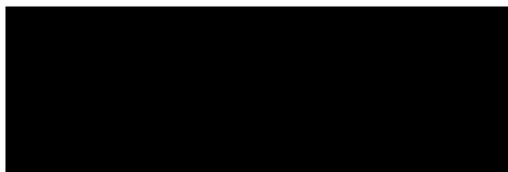
Office: VERMONT SERVICE CENTER FILE: 

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. § 101(a)(15)(U)

ON BEHALF OF PETITIONER:

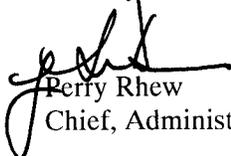


INSTRUCTIONS:

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 director denied the petition because the petitioner is not admissible to the United States and her request for a waiver of inadmissibility (Form I-192) was denied. On appeal, counsel submits a brief.

Applicable Law

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), which provides, in pertinent part, for U nonimmigrant classification:

(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that –

- (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
- (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
- (III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
- (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States[.]

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

In addition, U nonimmigrants must show that they are admissible to the United States, or that all inadmissibility grounds have been waived. See 8 C.F.R. § 214.1(a)(3)(i); 8 C.F.R. § 214.14(c)(2)(iv).

Facts and Procedural History

The petitioner is a native and citizen of Poland who entered the United States on May 11, 1999 as a lawful permanent resident. On April 30, 2006, the petitioner was arrested on five counts of robbery, was subsequently convicted on March 15, 2007, and sentenced to 573 days of incarceration. On May 24, 2010, the petitioner was ordered removed from the United States and her lawful permanent resident status terminated, based upon her March 15, 2007 conviction.

The petitioner filed the Form I-918 U petition and Form I-192 waiver application concurrently on May 25, 2010. On July 7, 2010, the director issued a Request for Evidence (RFE) relating only to the Form I-192 waiver application, and the petitioner, through counsel, responded to the RFE. On September 12, 2011, the director denied the Form I-192 waiver application as well as the Form I-918 U petition. In his decision on the Form I-918 U petition, the director stated that the petitioner was not eligible for U nonimmigrant status because she was inadmissible and her request for a waiver of inadmissibility had been denied. On appeal of the denial of the Form I-918 U petition, counsel submits a brief. 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 this ground 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 accordingly required an approved waiver pursuant to the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

The Petitioner is Inadmissible Pursuant to Section 212(a)(2)(A)(i)(I) of the Act

On March 15, 2007, the petitioner was convicted of robbery in violation of California Penal Code (CPC) §§ 211-212.5(c), second degree robbery. The petitioner was sentenced to five years of probation, 573 days of imprisonment, and ordered to pay restitution. The petitioner's robbery conviction is a crime involving moral turpitude. See *Matter of Martin*, 18 I&N Dec. 226, 227 (BIA 1982). Accordingly, the petitioner is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.¹

¹ The petitioner's robbery conviction is also a crime of violence, an aggravated felony. See *Thap v.*

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 is inadmissible under section 212(a)(2)(A)(i)(I) of the Act and her application to waive this ground of inadmissibility has been denied. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U) of the Act pursuant to 8 C.F.R. § 214.1(a)(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). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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

Mukasey, 544 F.3d 674, 677 (6th Cir. 2008). Although a conviction for an aggravated felony is not a ground of inadmissibility, crimes of violence will only merit a favorable exercise of discretion to grant a waiver in extraordinary circumstances pursuant to the regulation at 8 C.F.R. § 212.17(b)(2). (robbery under CPC § 211 is a crime of violence).