



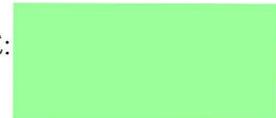
U.S. Citizenship
and Immigration
Services

(b)(6)

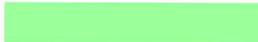


DATE: **AUG 22 2013** Office: VERMONT SERVICE CENTER

FILE:

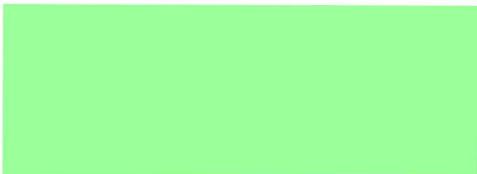


IN RE: Petitioner:



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. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (the director), denied the U nonimmigrant visa petition (Form I-918 U petition) and the Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted. The appeal will remain dismissed and 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. The director denied the petition because the petitioner was inadmissible to the United States due to her conviction for grand theft and her application for a waiver of her inadmissibility was denied.

Applicable Law

Section 101(a)(15)(U)(i) 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. Aliens who have been convicted of a crime involving moral turpitude are inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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. The AAO lacks jurisdiction to review the denial of a Form I-192 waiver application. 8 C.F.R. § 212.17(b)(3).

Factual and Procedural History

The petitioner is a native and citizen of [REDACTED] who was admitted to the United States on February 13, 1983 as a lawful permanent resident. On July 6, 2010, the petitioner was convicted of grand theft auto in the [REDACTED] Superior Court of [REDACTED] in violation of section 487(d)(1) of the [REDACTED] Penal Code [REDACTED]. The petitioner was sentenced to 16 months imprisonment. The petitioner was subsequently placed into removal proceedings and on February 4, 2011, an immigration judge ordered the petitioner removed from the United States because her conviction was an aggravated felony. On June 30, 2011, the Board of Immigration Appeals (BIA) dismissed the petitioner's appeal.

The petitioner filed the instant Form I-918 U petition and the Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on July 8, 2011. The director issued a Request for Evidence (RFE) on February 23, 2012 asking the petitioner to submit, among other items, evidence to support her waiver application. The petitioner, through counsel, responded to the RFE. On July

(b)(6)

20, 2012, the director denied the Form I-918 U petition and the Form I-192 application. In his decision on the Form I-918 petition, the director stated that the petitioner was ineligible for U nonimmigrant status solely because she was inadmissible and her request for a waiver of inadmissibility had been denied. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, counsel submitted a letter and additional evidence related to the petitioner's equities in the United States. Counsel did not dispute the director's determination that the petitioner is inadmissible to the United States, but instead asserted that the petitioner merited a favorable exercise of discretion to waive her grounds of inadmissibility.

In its March 25, 2013 decision on appeal, incorporated here by reference, the AAO withdrew the director's determination that the petitioner was inadmissible for being present in the United States without admission or parole and for fraud or misrepresentation under subsections 212(a)(6)(A)(i) and (C)(i) of the Act. The AAO nonetheless dismissed the appeal because the petitioner remained 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), and the director had denied her application for a waiver of inadmissibility (Form I-192).

On motion, counsel asserts that the AAO erroneously relied on the Ninth Circuit Court of Appeals decision in *Castillo-Cruz v. Holder*, 581 F.3d 1154 (9th Cir. 2009) to determine that the petitioner's conviction for grand theft was categorically a crime involving moral turpitude.

Analysis

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). *De novo* review fails to reveal any error in the AAO's prior decision that the petitioner is inadmissible for having been convicted of a crime involving moral turpitude.

At the time of the petitioner's conviction, the [REDACTED] defined theft as, in pertinent part:

Theft defined

(a) Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. In determining the value of the property obtained, for the purposes of this section, the reasonable and fair market value shall be the test

[REDACTED]. Penal Code § 484(a) (West 2010).

At the time of the petitioner's conviction, [REDACTED] § 487 further provided, in pertinent part:

Grand theft is theft committed in any of the following cases:

...

(d) When the property taken is any of the following:

- (1) An automobile, horse, mare, gelding, any bovine animal, any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow, or pig.

Penal Code § 487(d) (West 2010).

The Ninth Circuit Court of Appeals, within whose jurisdiction this case arose, and the Board of Immigration Appeals (BIA) have long held that theft offenses are crimes of moral turpitude. See *United States v. Esparza-Ponce*, 193 F.3d 1133, 1136 (9th Cir. 1999) (citing prior cases); *Matter of Scarpulla*, 15 I&N Dec. 139, 140-41 (BIA 1974) (“It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude.”); *Matter of De La Nues*, 18 I&N Dec. 140, 145 (BIA 1981) (“Burglary and theft or larceny, whether grand or petty, are crimes involving moral turpitude.”). However, a conviction for theft is considered to categorically involve moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330, 333 (BIA 1973). The Ninth Circuit has held that a conviction for grand or petty theft under the CPC requires the specific intent to deprive the victim of his or her property permanently. *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1160 (9th Cir. 2009).

On motion, counsel asserts that the petitioner’s conviction for grand theft is not categorically a crime involving moral turpitude because CPC § 487(d) does not specify whether the crime involves a permanent or temporary taking of property and the Ninth Circuit’s decision in *Castillo-Cruz* only addressed theft under CPC § 484. Counsel fails to acknowledge, however, that grand theft under CPC § 487(d) incorporates the definition of theft at CPC § 484. The Ninth Circuit has held that a conviction for theft under CPC § 484 requires the specific intent to permanently deprive the victim of his or her property. *Id.* at 1160. Consequently, the petitioner’s conviction for grand theft auto is categorically a crime involving moral turpitude and she remains inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The petitioner’s court docket shows that in the same criminal proceedings, she was also convicted of identity theft. Specifically, the conviction record shows that on July 6, 2010, the petitioner pled *nolo contendere* to count five of her criminal complaint, a violation of identity theft under CPC § 530.5(a).¹ The court convicted her of this additional offense and sentenced

¹ At the time of the petitioner’s conviction, this provision stated:

- (a) Every person who willfully obtains personal identifying information, as defined in subdivision (b) of Section 530.55, of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison.

her to 16 months of imprisonment, to run concurrently with her sentence for grand theft auto. Identity theft under subsection CPC § 530.5(a) may not categorically involve moral turpitude as it does not require the specific intent to defraud the victim. *See Heredia v. Holder*, 639 F.3d 1264, 1269 (10th Cir. 2011) (identity theft under Utah law categorically involved moral turpitude because it required the specific intent to defraud). Because the petitioner remains inadmissible due to her conviction for grand theft auto, we do not reach the issue of whether or not her conviction for identity theft also renders her inadmissible for an additional conviction of a crime involving moral turpitude under a modified categorical analysis.

Conclusion

In U-nonimmigrant visa petition proceedings, the petitioner bears the burden to establish her eligibility. 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. The petitioner has failed to establish her 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). The petitioner's application for a waiver of inadmissibility was denied and the AAO lacks jurisdiction to review that decision. The petitioner 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)(i). The appeal will remain dismissed.

ORDER: The motion is granted. The March 25, 2013 decision of the Administrative Appeals Office is affirmed. The petition remains denied.