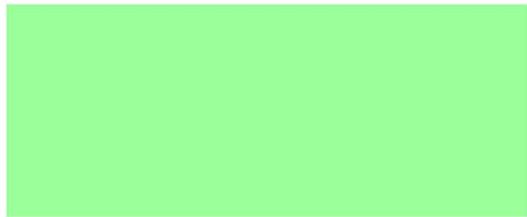


(b)(6)

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



Date:

DEC 04 2013

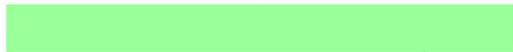
Office: VERMONT SERVICE CENTER

FILE:



IN RE:

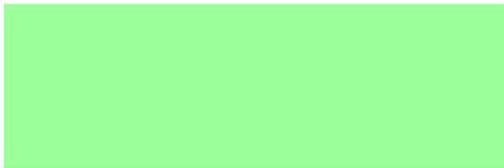
Petitioner:



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:

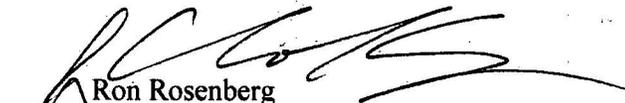


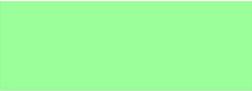
INSTRUCTIONS:

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 nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

The director denied the petition because the petitioner is currently a lawful permanent resident of the United States and, therefore, ineligible to be a nonimmigrant. The director also noted that the petitioner is inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I) (commission of a crime of moral turpitude) and 212(a)(6)(A)(i) (present without being admitted) of the Act. On appeal, counsel submits a copy of a hearing notice regarding the petitioner’s removal proceedings.

*Applicable Law*

Section 101(a)(15)(U) 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, as well as the victims’ qualifying family members. Section 101(a)(15) of the Act, defines the term “immigrant” as “every alien except an alien who is within one of the following classes of nonimmigrant aliens.” Section 101(a)(15)(U) of the Act is one such nonimmigrant classification that is not included in the definition of “immigrant” at section 101(a)(15) of the Act.

Section 212(a) of the Act, 8 U.S.C. § 1182(a), sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

(6) Illegal entrants and immigration violators.-

(A) Aliens present without permission or parole.-

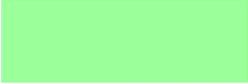
(i) In general.-An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

\* \* \*

Section 212(a)(2) of the Act pertains to criminal and related grounds of inadmissibility and states, in pertinent part:

(A) Conviction of certain crimes.

(i) In general. Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-



(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . .

\* \* \*

is inadmissible.

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.

*Facts and Procedural History*

The petitioner is a native and citizen of Mexico, who was granted lawful permanent resident (LPR) status on May 11, 2005. Removal proceedings were initiated against the petitioner on January 10, 2011, due to her criminal conviction in the State of Oregon for the offense of criminal mistreatment in the first degree. The record shows the petitioner was convicted upon her guilty plea to knowingly causing physical injury to her six-year old daughter. The petitioner's next removal hearing is scheduled for December 3, 2015, in the Tacoma, Washington, Immigration Court.

The petitioner filed the Form I-918 U petition on January 6, 2012 and subsequently filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192 waiver) on February 10, 2012. On January 30, 2013, the director denied the Form I-918 U petition noting the petitioner's ineligibility for nonimmigrant classification because of her LPR status. Specifically, the director, citing *Matter of A*, 6 I&N Dec. 651 (BIA 1995), stated that an alien may not be both an immigrant and a nonimmigrant at the same time. The director also noted that the definition of "immigrant" at section 101(a)(15) of the Act does not include an alien described at section 101(a)(15)(U) of the Act.

On appeal, counsel states on the Form I-290B, Notice of Appeal or Motion, that the petitioner is in removal proceedings and submits a copy of the petitioner's Notice to Appear and a hearing notice.

*Analysis*

Upon review of the record, we concur with the director's decision to deny the petition. The petitioner is a lawful permanent resident and is ineligible for U nonimmigrant classification. As noted by the director in his decision, section 101(a)(15) of the Act defines the term "immigrant" as "every alien except an alien who is within one of the following classes of nonimmigrant aliens." Section 101(a)(15)(U) of the Act is one such nonimmigrant classification that is not included in the definition of "immigrant" at section 101(a)(15) of the Act.

The record contains no evidence that the petitioner has lost her lawful permanent resident status. Although she was placed in removal proceedings due to her criminal conviction, those proceedings are ongoing. Lawful permanent resident status terminates upon entry of a final administrative order of removal. 8 C.F.R. § 1.1(p), 1001.1(p). See also *Etuk v. Slattery*, 936 F.2d 1433, 1447 (2d Cir. 1991) (citing *Matter of Gunaydin*, 18 I&N Dec. 326 (BIA 1982)). Lawful permanent residency does not end upon commission of acts which may render the resident inadmissible or removable, but upon entry of a final administrative order of removability based on such acts. *Matter of Gunaydin*, 18 I&N Dec. at 328. Here, the proceedings against the petitioner are ongoing and she has not received a final administrative order of removal. Lawful permanent residency may also be lost through abandonment, rescission, or relinquishment. See *id.* at 327 n.1. However, none of those circumstances exist in this case. Consequently, the petitioner remains a lawful permanent resident.

The statute and regulations also do not permit a lawful permanent resident to adjust status to that of a U nonimmigrant. The Act allows an alien to change from one nonimmigrant classification to another and permits lawful permanent residents to adjust to A, E and G nonimmigrant classification, but the Act contains no provision for the adjustment of a lawful permanent resident to U nonimmigrant status. See sections 247, 248 of the Act, 8 U.S.C. §§ 1257, 1258.

Furthermore, counsel fails to address the director's determination that the petitioner is inadmissible to the United States under sections 212(a)(2)(A)(i)(I) and 212(a)(6)(A)(i) of the Act. The record shows that the petitioner is inadmissible to the United States on each of the grounds cited to by the director. The petitioner does not deny that she last entered the United States without being inspected, admitted or paroled by an immigration officer. Therefore, she is inadmissible under section 212(a)(6)(A)(i) of the Act.

On May 28, 2010, the petitioner plead guilty to criminal mistreatment in the first degree in violation of Oregon Revised Statutes (ORS) section 163.205 in the [REDACTED], Oregon Circuit Court. The petitioner was sentenced to 36 months of probation. ORS 163.205 provides, in pertinent part:

(1) A person commits the crime of criminal mistreatment in the first degree if:

\* \* \*

(b) The person, in violation of a legal duty to provide care for a dependent person or elderly person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of a dependent person or elderly person, intentionally or knowingly:

(A) Causes physical injury or injuries to the dependent person or elderly person. . . .

Or. Rev. Stat. Ann. § 163.205 (West 2010).

ORS section 163.205 is, in plain language, Oregon's prohibition against child and elderly abuse. The Board of Immigration Appeals (BIA) and the Ninth Circuit Court of Appeals, in whose

jurisdiction this case arises, have found child abuse to constitute a crime involving moral turpitude where harm is inflicted on a person with whom the perpetrator has a familial relationship. See *Matter of Tran*, 21 I&N Dec. 291, 294 (BIA 1996) (“[I]nfliction of bodily harm upon a person with whom one has ... a familial relationship is an act of depravity which is contrary to accepted moral standards ... When such an act is committed willfully, it is an offense that involves moral turpitude.”) (citations omitted); *Guerrero de Nodahl v. Immigration & Naturalization Serv.*, 407 F.2d 1405, 1406-07 (9th Cir. 1969) (inflicting injury upon a child is so offensive to American ethics that moral turpitude is involved if it is done purposely or willingly).

Although ORS section 163.205 includes willfulness as an element, because the statute is divisible, under the modified categorical approach we must look to the record of conviction to determine whether the respondent was convicted of a crime involving moral turpitude. See *Taylor v. United States*, 495 U.S. 575, 110 S.Ct. 2143 (1990) (enunciating the categorical and modified categorical approaches), see also *Tokatly v. Ashcroft*, 371 F.3d 613, 620-24 (9th Cir. 2004) (applying the categorical and modified categorical methodology and defining what documents may be considered under the modified categorical approach). In this case, the conviction record shows that the petitioner plead guilty to knowingly causing physical injury to her daughter, a minor dependent. Furthermore, through her plea petition, where she admitted to “knowingly caus[ing] physical injury to [her] minor daughter,” the petitioner has admitted committing acts which constitute the essential elements of a crime involving moral turpitude. See *Matter of K-*, 7 I. & N. Dec. 594 (BIA 1957). As such, the petitioner has been convicted of, and has admitted committing acts which constitute the essential elements of, a crime involving moral turpitude, and she is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The record shows that the petitioner is inadmissible and her Form I-192 waiver application was denied. The petitioner’s inadmissibility renders her ineligible for U nonimmigrant classification. 8 C.F.R §§ 212.17, 214.14(c)(2)(iv).

### Conclusion

The petitioner remains a lawful permanent resident. She is also inadmissible to the United States and her Form I-192 waiver application was denied. Consequently, she is ineligible for U nonimmigrant status. The petitioner has failed to overcome these grounds for denial on appeal.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.