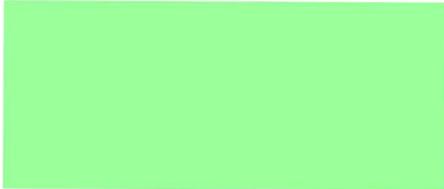


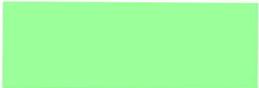


U.S. Citizenship  
and Immigration  
Services

(b)(6)



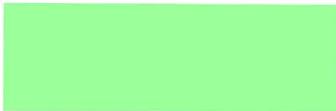
DATE: **MAR 25 2013** Office: VERMONT SERVICE CENTER

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:

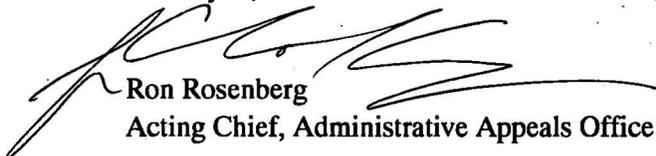


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 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 in accordance with the instructions on 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Ron Rosenberg  
Acting 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 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.

*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.

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.

\* \* \*

(C) Misrepresentation.-

- (i) In general. -Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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

(2)(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.

#### *Factual and Procedural History*

The petitioner is a native and citizen of Korea who claims to have last entered the United States on January 1, 1983 as a lawful permanent resident. The petitioner was placed into removal proceedings and on February 4, 2011, the petitioner was ordered removed from the United States because she had been convicted of 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 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 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 submits a letter and additional evidence related to the petitioner's equities in the United States. Counsel does not appear to dispute the director's determination that the petitioner is inadmissible to the United States. Instead, counsel asserts that a conviction for an aggravated felony is not a bar to the approval of the petitioner's Form I-918 and that she merits a favorable exercise of discretion to waive her grounds of inadmissibility.<sup>1</sup>

#### *Analysis*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of

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<sup>1</sup> The AAO will not review the director's determination that the petitioner's conviction for grand theft is an aggravated felony since the bar for aggravated felons is found in section 237 of the Act, which prescribes grounds of deportability, not inadmissibility, and thus is not relevant to the petitioner's I-918 U petition appeal.

a decision to deny a waiver.” As the AAO does not have jurisdiction to review whether the director properly denied the Form I-192 application, the AAO does not consider whether approval of the Form I-192 application should have been granted. The only issue before the AAO is whether the director was correct in finding the petitioner to be inadmissible and, therefore, requiring an approved Form I-192 application pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

In the July 20, 2012 denial, the director found the petitioner inadmissible under sections 212(a)(6)(A)(i) and (C)(i) of the Act. The director did not state the basis for those two grounds and the record does not support that determination. There is no evidence to support that the petitioner last entered the United States without being inspected, admitted or paroled by an immigration officer or that she committed fraud or misrepresentation to secure an immigration benefit. Therefore, she is not inadmissible under sections 212(a)(6)(A)(i) and (C)(i) of the Act. This portion of the director’s decision will be withdrawn.

The director also found the petitioner 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). On appeal, counsel does not dispute the petitioner’s inadmissibility but instead focuses her assertions on why the director should have favorably exercised his discretion and approved the Form I-192.

The BIA held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one’s fellow man or society in general. . . .

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

On July 6, 2010, the petitioner was convicted of grand theft auto in the Superior Court of California in violation of section 487(d)(1) of the California Penal Code (CPC). The petitioner was sentenced to 16 months imprisonment. At the time of the petitioner’s conviction, CPC § 487 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.

Cal. Penal Code § 487(d) (West 2009).

The BIA has found theft to categorically constitute a crime involving moral turpitude. U.S. Courts have held that the crime of theft or larceny, whether grand or petty, involves moral turpitude. *See Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974) (stating, "It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude . . ."); *Morasch v. INS*, 363 F.2d 30, 31 (9th Cir. 1966) (stating, "Obviously, either petty or grand larceny, i.e., stealing another's property, qualifies [as a crime involving moral turpitude].") However, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). The Ninth Circuit Court of Appeals has held that a conviction for theft (grand or petty) under the California Penal Code 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) (citations omitted). Thus, the petitioner is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of acts involving moral turpitude.

The petitioner therefore cannot be granted U nonimmigrant status because she is inadmissible under section 212(a)(2) of the Act and her Form I-192 has been denied.

#### *Conclusion*

As always in these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4). The petitioner has met the requirements of section 101(a)(15)(U)(i) of the Act, but 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). She 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).

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