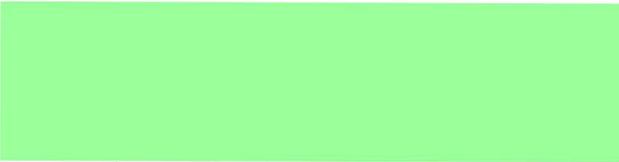


(b)(6)

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



Date: **NOV 13 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:

SELF-REPRESENTED

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,

for Ron Rosenberg  
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.

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 requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

On June 25, 2012, the petitioner submitted a Form I-918 U petition, receipt number [REDACTED]. On January 28, 2013, the director denied the Form I-918 U petition because the petitioner is inadmissible to the United States, and she failed to submit an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192).<sup>1</sup> The petitioner, through counsel, timely appealed the denial of her Form I-918 U petition. On appeal, counsel submits a brief.

*Analysis*

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 in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

On September 13, 2012, the director requested that the petitioner submit a Form I-192 because she was inadmissible under sections 212(a)(2)(A)(i)(I) (conviction of crimes involving moral turpitude) and 212(a)(2)(A)(i)(II) (controlled substance violations) of the Act. She failed to submit the Form I-192 in her response to the director's request. On appeal, the petitioner asserts that the director should first determine if she meets the criteria for U-1 nonimmigrant status at section 101(a)(15)(U)(i)(I) of the Act, before she proves admissibility.

The record shows that the petitioner was convicted of:

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<sup>1</sup> On or about April 9, 2012, the petitioner submitted a Form I-918 U petition, receipt number EAC 12 131 50367, which the director denied on October 12, 2012. On November 15, 2012, the petitioner, through counsel, filed an appeal with the AAO which was rejected as untimely filed on May 8, 2013.

- corporal injury to a spouse in violation of section 273.5(a) of the California Penal Code (CPC) on August 14, 2001, for which she was sentenced to six days incarceration and three years of probation and then 60 days incarceration upon violation of her probation;
- possession of controlled substance paraphernalia in violation of section 11364 of the California Health and Safety Code (H&S) on February 18, 2003, for which she was sentenced to 15 days incarceration;
- under the influence of controlled substances (methamphetamine) and possession of controlled substance paraphernalia (methamphetamine pipe) in violation of H&S §§ 11550(a) and 11364, respectively, on January 6, 2004, for which she was sentenced to three years of probation and then 90 days incarceration upon violation of her probation;
- possession of controlled substance paraphernalia (methamphetamine pipe) in violation of H&S § 11364 on May 27, 2004, for which she was sentenced to three years of probation;
- unlawful taking of a vehicle in violation of section 10851(a) of the California Vehicle Code (CVC) on May 4, 2006, for which she was sentenced to 180 days incarceration and three years of probation, and then 90 days incarceration upon twice violating her probation; and
- vehicle burglary in the second degree and grand theft in violation of CPC §§ 459-460(b) and 487(a), respectively, on June 15, 2007, for which she was sentenced to 365 days incarceration and three years of probation, and then 16 months imprisonment upon violation of her probation.

The petitioner's convictions for inflicting corporal injury on a spouse and grand theft are convictions for crimes involving moral turpitude. *See Matter of Tran*, 21 I&N Dec. 291, 294 (BIA 1996) (spousal abuse in violation of section 273.5(a) of the Cal. Penal Code is a crime involving moral turpitude); *Rashtabadi v. INS*, 23 F.3d 1562, 1568 (9<sup>th</sup> Cir. 1994) (grand theft in violation of section 487 of the Cal. Penal Code is a crime involving moral turpitude); *Matter of Chen*, 10 I&N Dec. 671 (BIA 1964) (grand theft is a crime involving moral turpitude).

Under section 10851(a) of the Cal. Veh. Code, a person is guilty of unlawfully taking a vehicle when they drive or take "a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner" of the vehicle. In *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193, 127 S.Ct. 815, 166 L.Ed 2d 683 (2007), the U.S. Supreme Court held a violation of section 10851(a) of the Cal. Veh. Code was a "theft offense." U.S. Courts have held that the crime of theft or larceny, whether grand or petty, involved moral turpitude. *Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974). However, the Board of Immigration Appeals (Board) has indicated that a conviction for theft is considered to involve moral turpitude when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). When determining if the petitioner is inadmissible for unlawfully driving or taking a vehicle, the modified categorical approach must be applied because a conviction under section 10851(a) of the Cal. Veh. Code does not categorically qualify as a "theft offense." *See Penuliar v. Mukasey*, 395 F.3d 1037 (9<sup>th</sup> Cir. 2005). The felony complaint included in the record of conviction indicates that the petitioner had the "intent to temporarily and permanently deprive" the owner of his or her possession of the vehicle. In addition, in her statement in support of her guilty plea, the petitioner states she unlawfully took and drove a vehicle "with the intent to deprive the owner of the possession of the car." The record of conviction shows that the petitioner's intent at the time she committed the crime was to permanently deprive the owner

of the motor vehicle. Therefore, the petitioner's conviction for unlawfully driving or taking a vehicle is also a conviction for a crime involving moral turpitude.

The petitioner's second degree vehicle burglary offense also involved moral turpitude. Cal. Penal Code § 459 provides, in pertinent part:

Every person who enters any . . . vehicle as defined by the Vehicle Code when the doors of such vehicle are locked . . . with intent to commit grand or petit larceny or any felony is guilty of burglary.

The Board has maintained that the determinative factor in assessing whether burglary involves moral turpitude is whether the crime intended to be committed at the time of entry or prior to the breaking out involves moral turpitude. *Matter of M-*, 2 I&N Dec. 721, 723 (BIA 1946). For example, the Board has held that burglary with intent to commit theft is a crime involving moral turpitude. *See Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982). The Ninth Circuit Court of Appeals has similarly held that burglary with the intent to commit theft is a crime involving moral turpitude. *See Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013, 1020 (9<sup>th</sup> Cir. 2005) ("Because the underlying crime of theft or larceny is a crime of moral turpitude, unlawfully entering a residence with intent to commit theft or larceny therein is likewise a crime involving moral turpitude."). The record of conviction shows that the petitioner was convicted for burglary in the second degree with the intent to commit larceny. Thus, the petitioner's conviction for burglary is also a conviction for a crime involving moral turpitude. Accordingly, the petitioner is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for being convicted of crimes involving moral turpitude.

The director also found the petitioner inadmissible under section 212(a)(2)(A)(i)(II) of the Act, for her controlled substance violations. Criminal court documents in the record support the director's determination that the petitioner is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violating any law relating to a controlled substance as a result of her 2003 and 2004 convictions.

As noted above, if an alien is inadmissible, the regulations require the filing of a Form I-192 in conjunction with a Form I-918 U petition. *See* 8 C.F.R §§ 212.17, 214.14(c)(2)(iv). A full review of the record supports the director's determination that the petitioner is inadmissible under sections 212(a)(2)(A)(i)(I) (conviction of crimes involving moral turpitude) and 212(a)(2)(A)(i)(II) (controlled substance violations) of the Act. Since the petitioner has not filed a Form I-192, she remains ineligible for U nonimmigrant classification because she is inadmissible to the United States.

### *Conclusion*

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). The petitioner has not established that she is admissible to the United States or that her grounds of inadmissibility have been waived. The petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

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*NON-PRECEDENT DECISION*

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