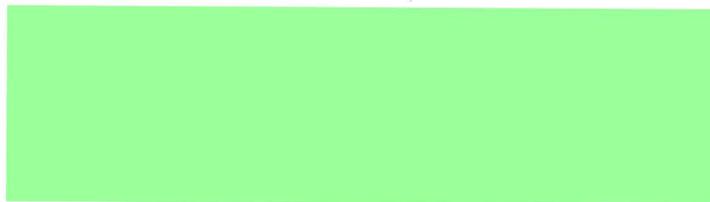


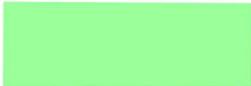


U.S. Citizenship  
and Immigration  
Services

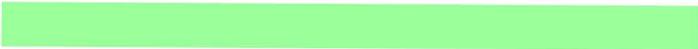
(b)(6)



Date: **OCT 22 2013** Office: VERMONT SERVICE CENTER

FILE: 

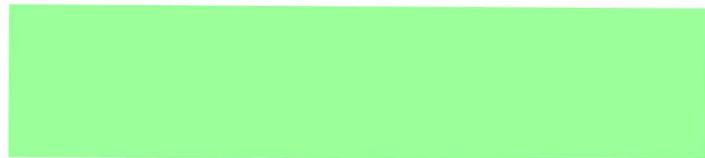
IN RE:

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:

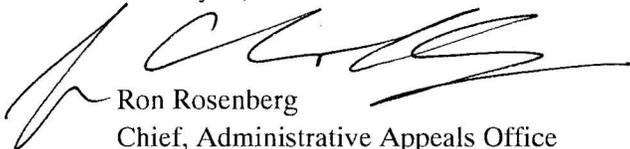


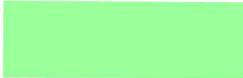
INSTRUCTIONS:

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 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 not admissible to the United States and her request for an advanced waiver of inadmissibility (Form I-192) was denied. On appeal, counsel submits a letter.

*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:

(1) Health-Related Grounds

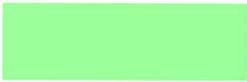
(A) In General. . . Any alien –

\* \* \*

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General) -

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior . . .



\* \* \*

is inadmissible.

\* \* \*

(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:

(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.

*Facts and Procedural History*

The petitioner is a native and citizen of Mexico who claims to have last entered the United States in September, 1998, without being inspected, admitted or paroled by an immigration officer. The petitioner filed the instant Form I-918 U petition and the Form I-192 on May 2, 2011. On June 27, 2012, the director denied the Form I-918 petition and the Form I-192 application. In his decision on the Form I-918 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.

Counsel does not appear to dispute the director's determination that the petitioner is inadmissible to the United States. Instead, counsel asserts that two of the grounds of inadmissibility, the petitioner's mental disorder and her conviction for a crime involving moral turpitude (CIMT), are directly related to the violence perpetrated against her and that the grant of the petitioner's waiver furthers the public interest.

### *Analysis*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 application in order to waive any ground of inadmissibility. The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of 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 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

The director determined that the petitioner met all the statutory eligibility criteria for U nonimmigrant status, but found the petitioner inadmissible under: section 212(a)(1)(A)(iii) of the Act, as an alien who has or has had a mental disorder, section 212(a)(2)(A)(i)(I), as an alien who has been convicted of a CIMT, and section 212(a)(6)(A)(i) of the Act, as an alien present without admission or parole. The record shows that the petitioner is inadmissible to the United States under sections 212(a)(2)(A)(i)(I) and (6)(A)(i) of the Act, but not under 212(a)(1)(A)(iii) of the Act.

Although the director found the petitioner inadmissible under section 212(a)(1)(A)(iii) of the Act as an alien with a mental disorder, this ground does not apply in this case as there is no evidence that the director considered the petitioner's condition in accordance with the regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General as required under section 212(a)(1)(A)(iii) of the Act, nor that he considered the waiver provision at section 212(g)(3) of the Act. In addition, this ground is generally only applied when a medical examination is required for the benefit, which is not the case here.<sup>1</sup>

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.

In addition, the petitioner's criminal history shows she has been convicted of a crime involving moral turpitude. Under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), an alien is inadmissible if he or she has been convicted of a crime involving moral turpitude. The term "crime involving moral turpitude" is not defined in the Act or the regulations, but has been part of

---

<sup>1</sup> See USCIS Adjudicator's Field Manual, Cpt. 40.1, *Health Related Grounds of Inadmissibility and Medical Examination* (Mar. 19, 2009).

the immigration laws since 1891. *Jordan v. De George*, 341 U.S. 223, 229 (1951) (noting that the term first appeared in the Act of March 3, 1891, 26 Stat. 1084). The Board of Immigration Appeals (BIA) has explained that moral turpitude “refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.” *Matter of Franklin*, 20 I&N Dec 867, 868 (BIA 1994), *aff’d*, 72 F.3d 571 (8<sup>th</sup> Cir. 1995). A crime involving moral turpitude must involve both reprehensible conduct and some degree of scienter, be it specific intent, deliberateness, willfulness or recklessness. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689 n.1, 706 (A.G. 2008). When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *Id.* at 696; *Matter of L-V-C-*, 22 I&N Dec. 594, 603 (BIA 1999); *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989).

In *Matter of Silva-Trevino*, the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. 24 I&N Dec. 687. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. 24 I&N Dec. at 698 (citing *Duenas-Alvarez*, 549 U.S. at 193). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

If a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage or “modified categorical” inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. 24 I&N Dec. at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708. Finally, if review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709.

On November 22, 2010, the petitioner was convicted of assault/bodily injury in the District Court of [REDACTED] Texas, in violation of section 22.01 of the Texas Penal Code.<sup>2</sup> Upon review of the Texas law at issue here, we find that not all of the actions punishable encompass conduct involving moral turpitude. A crime involves moral turpitude when a vicious motive or a corrupt mind or knowing or intentional conduct is a statutory element of the offense. *See Perez-Contreras, supra*. However, the mental state underlying a conviction for recklessly causing bodily injury under

<sup>2</sup> District Court of [REDACTED] Texas, Case number [REDACTED]

section 22.01 of the Texas Penal Code would not involve moral turpitude where such actions do not involve serious bodily injury. *See In Re Fualaau*, 21 I&N Dec. 475, 478 (BIA 1996). An offense involving minimal harm could support a conviction under section 22.01 of the Texas Penal Code. In *Lewis v. State*, 530 S.W.2d 117, 118 (Tex.Cr.App.1975), the Court of Appeals stated that the element of “bodily injury” was proven when the victim testified to suffering physical pain when the defendant grabbed her briefcase and twisted her arm back, causing her to sustain a small bruise. Thus, not all of the conduct punishable under the statute involves moral turpitude.

Because section 22.01 of the Texas Penal Code encompasses conduct that both does and does not involve moral turpitude, a conviction under its provisions is not categorically a crime involving moral turpitude. Although the record of conviction does not specify under which subsection the petitioner was convicted, the incident report states that the petitioner assaulted her ex-husband with a hammer, causing bodily injury. It has long been recognized that assault with a deadly weapon or another aggravating factor may be a crime involving moral turpitude. *In re Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006) (stating, “assault and battery with a deadly weapon has long been deemed a crime involving moral turpitude by both this Board and the Federal courts, because the knowing use or attempted use of deadly force is deemed to be an act of moral depravity that takes the offense outside the ‘simple assault and battery’ category); *see also Matter of Medina*, 15 I&N Dec. 611 (BIA 1976); *Matter of O-*, 3 I&N Dec. 193, 197 (BIA 1948) (“But the offense here is not merely *mala prohibita*, it is inherently base, and this is so because an assault aggravated by the use of a dangerous or deadly weapon is contrary to accepted standards of morality in a civilized society.”).

On appeal, counsel asserts that the petitioner’s mental disorder and criminal background are both directly related to the domestic violence perpetrated against her. The evidence in the record shows that the petitioner’s ex-husband physically and mentally abused her for many years, and that the petitioner had obtained several protective orders against him. The petitioner also called the police on at least three occasions as a result of her ex-husband’s abuse against her. On her Form I-918 U petition, the petitioner explained that she was suffering from mental illness at the time of the assault, and that she does not clearly remember the incident. Counsel also contends that the petitioner only plead guilty to the charge of assault because she was advised to do so by her attorney, and she wanted to get home to her children and avoid any problems with immigration. While we recognize the serious harm the petitioner has suffered at the hands of her ex-husband and do not discount how the abuse has affected her life, without evidence that her conviction has been vacated on the merits or due to a procedural defect such that it would not have immigration consequences, she remains inadmissible for having been convicted of a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act.

Accordingly, the petitioner cannot be granted U-1 nonimmigrant status because she is inadmissible under sections 212(a)(2)(A)(i)(I) and (6)(A)(i) of the Act, her Form I-192 has been denied, and we have no jurisdiction to review the denial of a Form I-192 waiver application submitted in connection with a U petition. 8 C.F.R. § 212.17(b)(3).



*NON-PRECEDENT DECISION*

Page 7

*Conclusion*

The appeal will be dismissed for the above stated reasons. 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. The petition remains denied.