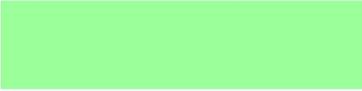
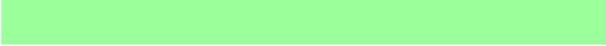




U.S. Citizenship
and Immigration
Services

(b)(6)

Date: Office: VERMONT SERVICE CENTER FILE: 
SEP 12 2013

IN RE: PETITIONER: 
BENEFICIARY: 

APPLICATION: Petition for U Nonimmigrant Classification for Qualifying Family Member of U-1
Nonimmigrant Pursuant to Section 101(a)(15)(U)(ii) of the Immigration and Nationality Act,
8 U.S.C. § 1101(a)(15)(U)(ii)

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), approved the petitioner’s U nonimmigrant visa petition (Form I-918 U petition), but denied the Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) submitted by the petitioner on behalf of her child. 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 of her child under section 101(a)(15)(U)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(ii), as a qualifying family member of a U-1 nonimmigrant.

Applicable Law

Section 101(a)(15)(U) of the Act provides for U-1 nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. Section 101(a)(15)(U)(ii) allows certain family members to also be accorded U nonimmigrant status based upon their qualifying relationship to the U-1 nonimmigrant. 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 Supplement A, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

(2) Criminal and Related Grounds

(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.

* * *

(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.

Factual and Procedural History

The petitioner filed the Form I-918 Supplement A on February 16, 2012 for the beneficiary, a native and citizen of Ecuador, who also filed an accompanying Form I-192 (Application for Advance Permission to Enter as Nonimmigrant). On October 15, 2012, the director issued a Request for Evidence (RFE) regarding the Form I-192, noting that the beneficiary was inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) and possibly under section 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude) of the Act. The beneficiary responded with additional evidence. On February 11, 2013, the director denied the Form I-192 because the beneficiary was inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole) and 212(a)(2)(A)(i)(I) (conviction of crimes involving moral turpitude) of the Act, and the director did not find that a favorable exercise of his discretion was warranted. The director denied the petitioner's Form I-918 Supplement A on the same date because the beneficiary's Form I-192 had been denied. The petitioner, through counsel, timely appealed the denial of the Form I-918 Supplement A. On appeal, counsel asserts that the director improperly used his discretion in denying the Form I-192 and Form I-918 Supplement A. She claims that the beneficiary helps support his siblings and ill mother, he participated in classes in prison and has completed his General Educational Development (GED) tests, and is "compliant in all forms and terms of his sentence."

The Beneficiary's Inadmissibility

All nonimmigrants, including U 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 qualifying family members of U-1 nonimmigrants who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(f)(3)(ii) require the filing of a Form I-192 in conjunction with a Form I-918 Supplement A 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, the only issue before the AAO is whether the director was correct in finding the beneficiary inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(f)(3)(ii).

In his February 11, 2013 denial decision, the director did not find the beneficiary ineligible for U-3 nonimmigrant status for any reason other than his inadmissibility. The director determined that the beneficiary was inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole) and 212(a)(2)(A)(i)(I) (conviction of crimes involving moral turpitude) of the Act. A full review of the record supports the director's determination that the beneficiary is inadmissible under these sections.

The record shows that the beneficiary was convicted of sexual assault in the second degree in violation of section 53a-71(a)(1) of the Connecticut General Statutes (CGS) on November 6, 2012, for which he was

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sentenced to three years imprisonment and ten years of probation with conditions.¹ Although strict liability crimes generally do not involve moral turpitude because they lack the requisite *mens rea*, statutory rape under CGS § 53a-71(a)(1) is not a strict liability crime and requires the general intent to commit sexual intercourse with the victim. *State v. Sorabella*, 891 A.2d 897, 908-09 (Conn. 2006). In addition, where the offender and the victim have a familial relationship showing the offender knew the victim's age, the offender's conviction for a sexual offense against a child categorically involves moral turpitude. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 709 (A.G. 2008). In this case, the record shows that the beneficiary was convicted of sexually assaulting his younger sister. Accordingly, the beneficiary is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for being convicted of a crime involving moral turpitude.

The record indicates that the beneficiary entered the United States on November 5, 2009 without inspection. Accordingly, the beneficiary is inadmissible under section 212(a)(6)(A)(i) of the Act, as an alien present without admission or parole.

On appeal, counsel does not contest the beneficiary's inadmissibility but instead focuses her assertions on why the director should have favorably exercised his discretion and determined that the beneficiary is not a danger to the community.

The director denied the beneficiary's application for a waiver of inadmissibility and we have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 Supplement A. 8 C.F.R. § 212.17(b)(3).

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 the beneficiary is admissible to the United States or that his grounds of inadmissibility have been waived. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(ii) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

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

¹ At the time of his conviction sexual assault in the second degree was defined as, in pertinent part:

- (a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and: (1) Such other person is thirteen years of age or older but under sixteen years of age and the actor is more than three years older than such other person