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

(b)(6)

U.S. Citizenship and Immigration Services

Date: JUL 28 2014 Office: VERMONT SERVICE CENTER FILE:

IN RE: PETITIONER:
BENEFICIARY:

PETITION: Petition for U Nonimmigrant Classification for Qualifying Family Member of U-1 Recipient 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), 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 father. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification of her father 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, or

* * *

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.

* * *

(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.

(ii) Falsely claiming citizenship

(I) In General.–Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

Facts and Procedural History

The petitioner filed the Form I-918 Supplement A on April 23, 2012 for the beneficiary, a native and citizen of Mexico. On the same day, the beneficiary filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On May 24, 2013, 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) of the Act. The director also requested evidence regarding the beneficiary's criminal history. The beneficiary, through counsel, responded with additional evidence. On October 2, 2013, the director denied the Form I-192 finding the beneficiary inadmissible under sections 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude), 212(a)(6)(A)(i) (present without admission or parole), 212(a)(6)(C)(i) (fraud/misrepresentation), and 212(a)(6)(C)(ii) (false claim to U.S. citizenship) of the Act. 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 does not dispute that the beneficiary is inadmissible to the United States but claims that the beneficiary's family will be economically and emotionally devastated if the beneficiary's waiver application is not approved.

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 we do not have jurisdiction to review whether the director properly denied the Form I-192, the only issue before us 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).

A full review of the record supports the director's determination that the beneficiary is inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. The record establishes, and the beneficiary admits, that he entered the United States in August 1999 or August 2000 without admission, inspection or parole. As such, the beneficiary is inadmissible under section 212(a)(6)(A)(i) of the Act.

The director also found the beneficiary inadmissible under section 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude) of the Act. The Board of Immigration Appeals (Board) has "observed that moral 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." *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992). Additionally, "moral turpitude has been defined as an act which is per se morally reprehensible and intrinsically wrong, or malum in se, so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude." *Matter of Franklin*, 20 I&N Dec. 867, 868 (BIA 1994).

The record shows that the beneficiary was convicted of assault in the fourth degree (domestic violence) in violation of section 9A.36.041 of the Revised Code of Washington (RCW)[1] by the Washington, District Court, on for which he was sentenced to 365 days incarceration and two years of probation.

In *Matter of Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006), the Board explained that "[i]t has long been recognized that not all crimes involving the injurious touching of another reflect moral depravity on the part of the offender, even though they may carry the label of assault, aggravated assault, or battery under the law of the relevant jurisdiction." Citing *Matter of B-*, 1 I&N Dec. 52, 58 (BIA, A.G. 1941) (finding that second-degree assault under Minnesota law does not qualify categorically as a crime involving moral turpitude (following *United States ex rel. Zaffarano v. Corsi*, 63 F.2d 757, 758 (2d Cir. 1933)). However, if the assault and battery offenses involve aggravating factors, such as a deadly weapon, this significantly increases culpability. *Id.* at 971. In addition, assault and battery offenses involving the intentional infliction of serious bodily injury on another involve moral turpitude because "such intentionally injurious conduct reflects a level of immorality that is greater than that associated with a simple offensive touching." *Id.*

Fourth degree assault under RCW § 9A.36.041 is "essentially an assault with little or no bodily harm, committed without a deadly weapon – so-called simple assault." *State v. Hahn*, 174 Wash.2d 126, 129, 271 P.3d 892, 893 (2012). Simple assault is not considered to be a crime involving moral turpitude. *See Matter of Short*, 20 I&N Dec. 136, 139 (BIA 1989); *see also Matter of Faulaau*, 21 I&N Dec. 475, 477 (BIA 1996).

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[1] Section 9A.36.041 of the Rev. Code of Wash. states, "[a] person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another." (West 2014).

Here, however, the record of conviction shows that the beneficiary's assault conviction included domestic violence, and fourth degree assault when committed by one family or household member against another is a crime of domestic violence in the State of Washington. *See* RCW § 10.99.020(5)(d). Under 8 C.F.R § 214.1(a)(3)(i), the burden is on the beneficiary to show that he is admissible to the United States. While the record of conviction does not contain complete information regarding the petitioner's conviction for assault in the fourth degree in violation of RCW § 9A.36.041, neither the petitioner nor counsel contests the petitioner's inadmissibility. As such, the beneficiary is inadmissible under section 212(a)(2)(A)(i) of the Act.

In addition, the director found the beneficiary inadmissible under sections 212(a)(6)(C)(i) (fraud/misrepresentation) and 212(a)(6)(C)(ii) (false claim to U.S. citizenship) of the Act. However, the evidence in the record does not establish that the beneficiary procured or attempted to procure a U.S. immigration benefit through fraud or willful misrepresentation of a material fact or that he made a false claim to U.S. citizenship. Therefore, the beneficiary is not inadmissible under sections 212(a)(6)(C)(i) and 212(a)(6)(C)(ii) of the Act. These portions of the director's decision are withdrawn.

Counsel does not contest the beneficiary's inadmissibility but instead focuses his assertions on the hardship the beneficiary's children will suffer if he is not granted a waiver. 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 under sections 212(a)(6)(A)(i) (present without admission or parole) and 212(a)(2)(A)(i) (conviction of a crime involving moral turpitude) of the Act 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.