



U.S. Citizenship  
and Immigration  
Services

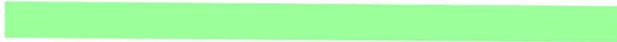
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Date: **MAR 18 2014** Office: VERMONT SERVICE CENTER



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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is again before the AAO on motion to reopen. The motion will be granted. The appeal will remain dismissed and the underlying petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), as an alien victim of certain qualifying criminal activity. On June 25, 2012, the petitioner submitted a Form I-918, Petition for U Nonimmigrant Status (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 a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192).<sup>1</sup> The petitioner timely filed an appeal with the AAO, which was dismissed. The petitioner timely filed the instant motion with the AAO.

The petitioner has met the requirements for a motion to reopen at 8 C.F.R. § 103.5(a). On motion, the petitioner claims that she was unable to prepare and submit a Form I-192 because she was detained for 15 months without resources. While she admits that she committed crimes which make her inadmissible, she wants to remain in the United States to be with her family. In support of her claims, the petitioner submits a Form I-192, additional evidence, and documents already included in the record. As the petitioner has submitted documentary evidence to support her new claim, the motion to reopen will be granted.

### *Analysis*

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 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 asserted that the director should first determine if she met the criteria for U-1 nonimmigrant status at section 101(a)(15)(U)(i)(I) of the Act, before she proves admissibility. The AAO dismissed the petitioner's appeal as she did not establish that she is admissible to the United States or that her grounds of inadmissibility were waived. On motion, the petitioner submits a Form I-192 to waive her grounds of inadmissibility. The only issue before the AAO is whether the petitioner is inadmissible and therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

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<sup>1</sup> On or about April 9, 2012, the petitioner submitted a Form I-918 U petition, receipt number [REDACTED] 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.

As determined in our previous decision of November 13, 2013, 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.

The record shows that the petitioner was convicted of:

- 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.

On motion, the petitioner claims that her convictions are not recent, they are not serious, and she has “paid [her] debts to society.” The petitioner does not contest her inadmissibility but instead focuses her assertions on why her Form I-192 waiver request should be approved.

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 does not have an approved waiver of inadmissibility, she remains ineligible for U nonimmigrant classification because she is inadmissible to the United States.

Moreover, the petitioner filed her Form I-918 U petition on June 25, 2012 and was required to submit a Form I-192 as initial evidence. 8 C.F.R. § 214.14(c)(2)(iv). Although on motion the petitioner submits a Form I-192, it was not submitted as initial evidence with her Form I-918 U petition.<sup>2</sup> According to the regulation at 8 C.F.R. § 103.2(b)(8)(ii), “[i]f all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility . . .”. As the petitioner has failed to submit required initial evidence with her Form I-918 U petition, she has failed to establish her eligibility for U nonimmigrant classification and her Form I-918 U petition must remain denied.

*Conclusion*

The petitioner is inadmissible to the United States and she has not filed a Form I-192 in conjunction with her Form I-918 U petition as required at 8 C.F.R. §§ 214.17, 214.14(c)(2)(iv). Accordingly, the petitioner is ineligible for U nonimmigrant status under section 101(a)(15)(U)(i) of the Act and her petition must remain denied.

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 motion is granted. The appeal remains dismissed and the petition remains denied.

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<sup>2</sup> The petitioner submitted her motion to reopen on December 16, 2013.