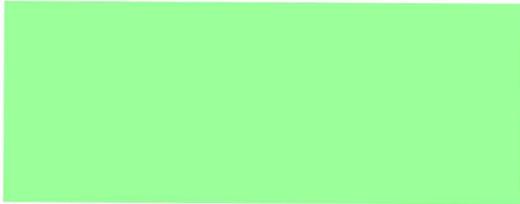




U.S. Citizenship  
and Immigration  
Services

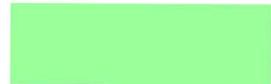
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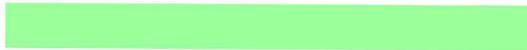
Date: **OCT 14 2014** Office:

VERMONT SERVICE CENTER

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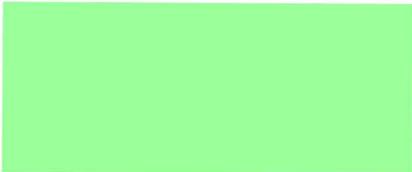


IN RE: PETITIONER:



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 U nonimmigrant visa petition and 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 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.

*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 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.

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.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if –

\* \* \*

(II) the maximum penalty possible for the crime for which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

\* \* \*

(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.

*Facts and Procedural History*

The petitioner is a native and citizen of Mexico who claims to have initially entered the United States in 1990 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition on April 6, 2012, with an accompanying Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On May 6, 2013, the director issued two Requests for Evidence (RFE) noting that the petitioner was inadmissible to the United States and requesting a victimization statement from the petitioner. The petitioner responded to the RFEs with additional statements and evidence, which the director found insufficient to waive his ground of inadmissibility and he denied the Form I-192. The director determined that the petitioner was inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. The director denied the petitioner's Form I-918 U petition on the same day. Although the director determined that the petitioner was statutorily eligible for U nonimmigrant status, he denied the Form I-918 U petition because the petitioner was inadmissible to the United States and his Form I-192 waiver of inadmissibility was denied. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner, through counsel, does not dispute that the petitioner is inadmissible to the United States but claims that the petitioner's waiver should be granted as a matter of discretion. Counsel asserts that the director did not consider the petitioner's positive equities, including his lack of other immigration violations, his criminal history, or "the fact that [he] is paralyzed." Counsel indicated that a brief or other evidence would be submitted within 30 days; however, as of the date of this decision, we have received no additional statements or evidence.

*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. 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, we do not consider whether approval of the Form I-192 should have been granted. The

issue before us is whether the director was correct in finding the petitioner inadmissible to the United States and, therefore, requiring an approved Form I-192 pursuant to 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 section 212(a)(6)(A)(i) (present without admission or parole) of the Act. The petitioner does not dispute that he is present in the United States without admission or parole. As noted above, the petitioner admits to last entering the United States in 1990 without inspection. As such, the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act.

Although in his denial decision, the director only indicated that the petitioner was inadmissible to the United States under section 212(a)(6)(A)(i) of the Act, a full review of the record shows that the petitioner is also inadmissible under section 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude) of the Act.<sup>1</sup> 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). In order to determine whether a conviction involves moral turpitude, the decision-maker must "look first to statute of conviction rather than to the specific facts of the alien's crime." *Matter of Silva-Trevino*, 24 I&N Dec. 687, 688 (A.G. 2008) (overruled in the Ninth Circuit Court of Appeals on other grounds).

The record shows that on August 18, 1997, the petitioner was convicted of sexual misconduct, in violation of Kentucky Revised Statutes (K.R.S.), a Class A misdemeanor.<sup>2</sup> The petitioner was sentenced to 12 months incarceration, but the imposition of the sentence was stayed and the petitioner was required to serve 45 days in jail.<sup>3</sup> The record shows that at the time of the crime, the victim was 14 years of age. Section 510.140 of Kentucky Rev. Stat. provides in pertinent part: "A person is guilty of sexual misconduct when he engages in sexual intercourse or deviate sexual intercourse with another person without the latter's consent." (West 2014).

The Seventh Circuit Court of Appeals (Seventh Circuit) in *Wanjiru v. Holder*, 705 F.3d 258 (7th Cir. 2013), indicated that although a violation of K.R.S. § 510.140 is a misdemeanor, it is a crime of moral turpitude. In

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<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003).

<sup>2</sup> "A sentence of imprisonment for a misdemeanor shall be a definite term and shall be fixed within the following maximum limitations: (1) For a Class A misdemeanor, the term shall not exceed twelve (12) months . . . ." Ky. Rev. Stat. § 532.090 (West 2014).

<sup>3</sup> Although the maximum term of imprisonment for a violation of K.R.S. § 510.140 is not to exceed one year, the petitioner's conviction does not meet the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act because he was sentenced to 12 months imprisonment.

addition, in *Matter of Silva-Trevino*, the Attorney General analyzed whether an offense that involved sexual conduct with a minor constituted a crime involving moral turpitude. The Attorney General stated that “so long as the perpetrator knew or should have known that the victim was a minor, any intentional sexual contact by an adult with a child involves moral turpitude.” *Matter of Silva-Trevino*, 24 I&N Dec. at 705 (emphasis in original). The Attorney General found that “whether the perpetrator knew or should have known the victim’s age is a critical factor in determining whether his or her crime involved moral turpitude for immigration purposes.” *Id.* at 706. The evidence in the record shows that the petitioner knew the victim was a minor. 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 a crime involving moral turpitude.

On appeal, counsel does not contest the petitioner’s grounds of inadmissibility but instead focuses his assertions on why the director should have favorably exercised his discretion and approved his Form I-192 waiver request. The director denied the petitioner’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 U petition. 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). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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