

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



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **SEP 08 2014** 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 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) of the Act provides, in pertinent part, for U nonimmigrant classification to:

- (i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --
  - (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
  - (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
  - (III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
  - (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

\* \* \*

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in 18 U.S.C. § 1351); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]<sup>1</sup>

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<sup>1</sup> The crimes of stalking and fraud in labor contracting as defined in 18 U.S.C. § 1351 were not listed as qualifying criminal activities when the petitioner filed the instant Form I-918 U petition. The Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4 (VAWA 2013), which came into effect on March 7, 2013, amended section 101(a)(15)(U)(iii) of the Act to include these two crimes as qualifying criminal activities.

Under section 214(p) of the Act, 8 U.S.C. § 1184(p), a petition for U nonimmigrant classification must contain a law enforcement certification. Specifically, the petitioner must provide:

a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). . . . This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

Under the definitions used at 8 C.F.R. § 214.14(a), the term *Investigation or prosecution* “refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.”

Pursuant to the regulations, the petitioner also must show that “since the initiation of cooperation, he has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3). This regulatory provision “exclude[es] from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested.” *New Classification for Victims of Criminal Activity; Eligibility for ‘U’ Nonimmigrant Status; Interim Rule, Supplementary Information*, 72 Fed. Reg. 53014, 53019 (Sept. 17, 2007). If the petitioner “only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the [Battered Immigrant Women Protection Act of 2000] is not furthered.” *Id.*

In addition, 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, or

\* \* \*

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).

(B) Multiple Criminal Convictions.- Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more 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.

Further, the regulation at 8 C.F.R. § 214.14(c)(4) prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, “U Nonimmigrant Status Certification.”

#### *Facts and Procedural History*

The petitioner is a native and citizen of Mexico who claims to have initially entered the United States on July 2, 1999 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition

on December 28, 2011. The petitioner also filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on the same day. On February 1, 2013, the director issued a Request for Evidence (RFE) noting that the petitioner was inadmissible to the United States. In addition, the director requested evidence of the petitioner's continuing helpfulness to law enforcement and a copy of his passport. The petitioner responded with additional evidence. On June 25, 2013, the director found the petitioner's response insufficient to waive his grounds of inadmissibility and denied the Form I-192. The director determined that the petitioner was inadmissible under sections 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude), 212(a)(2)(B) (multiple offenses, five year sentence), and 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, she denied the Form I-918 U petition because the petitioner was inadmissible to the United States and his Form I-192 waiver of inadmissibility had been denied. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition. On appeal, counsel indicated that a brief or other evidence will be submitted within 30 days. However, as of the date of this decision, we have received no additional statements or evidence.

On appeal, the petitioner, through counsel, does not dispute that the petitioner is inadmissible to the United States but claims that the petitioner has taken responsibility for his actions and he is rehabilitated. He notes that the petitioner has two United States citizen children "who he loves and cares for deeply."

### *Analysis*

#### Inadmissibility

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 only 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 such the petitioner is inadmissible under section 212(a)(6)(A)(i) of the Act.

The director also found the petitioner inadmissible under section 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude) of the Act. The record shows that the petitioner was convicted of:

- theft in violation of section 609.52.2134 of the Minnesota Statutes on April 5, 2007, for which he was sentenced to one year of probation;
- careless driving in violation of Minn. Stat. § 169.13.2 on September 12, 2008, for which he was sentenced to 30 days incarceration and one year of probation; and
- disorderly conduct in violation of Minn. Stat. § 609.72.1 on June 5, 2011, for which he was sentenced to 90 days incarceration and one year of probation.

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).

On April 5, 2007, the petitioner was convicted of theft, in violation Minn. Stat. § 609.52.2134, for which he was sentenced to one year of probation. Under section 609.52 of the Minn. Stat., a person is guilty of theft when he or she “intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other’s consent and with intent to deprive the owner permanently of possession of the property . . . .” U.S. Courts have held that the crime of theft or larceny, whether grand or petty, involves moral turpitude. *Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974). However, the Board has indicated that a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). The Minnesota Statute that the petitioner violated requires a specific intent to deprive the victim of his or her property permanently. Therefore, the petitioner’s conviction under section 609.52.2134 of the Minnesota Statute is a crime involving moral turpitude.

Counsel does not dispute that the petitioner’s conviction is for a crime involving moral turpitude but claims that the petitioner’s conviction meets the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act. Under section 212(a)(2)(A)(ii)(II) of the Act, the petitioner must have committed only one crime involving moral turpitude, and the maximum penalty possible for that crime did not exceed imprisonment for one year and, if he was convicted of such crime, he was not sentenced to a term of imprisonment in excess of six months. The maximum term of imprisonment for a violation of Minn. Stat. § 609.52.2134 is not to exceed one year, and the petitioner was not sentenced to any time in confinement. Although the petitioner’s conviction is for a crime involving moral turpitude, his conviction meets the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act, and the inadmissibility ground at section 212(a)(2)(A)(i)(I) of the Act does not apply to him. Accordingly, this portion of the director’s decision is withdrawn.

In addition, the director found that based on the petitioner's convictions, he was inadmissible under section 212(a)(2)(B) (multiple offenses, five year sentence) of the Act. However, the evidence in the record does not establish that the petitioner was sentenced to five years or more in confinement. Accordingly, he is not inadmissible under section 212(a)(2)(B) of the Act. This portion of the director's decision will also be withdrawn.

On appeal and in response to the RFE, counsel claims that most of the petitioner's family is in the United States including his two United States citizen children, and if he is removed to Mexico, he will not be able to support them emotionally and financially. In addition, counsel states the petitioner has rehabilitated and "changed his life." Counsel does not contest the petitioner's grounds of inadmissibility but instead focuses his assertions on why the director should have favorably exercised her discretion and approved the petitioner's 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).

Accordingly, the petitioner is ineligible for U nonimmigrant status because he is inadmissible to the United States and the grounds of his inadmissibility have not been waived. More importantly, however, the petitioner has failed to establish that he was the victim of a qualifying crime or criminal activity, or his continuing helpfulness in the investigation or prosecution of qualifying criminal activity, which renders him statutorily ineligible for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

#### Victim of a Qualifying Crime or Criminal Activity

The U Nonimmigrant Status Certification (Form I-918 Supplement B) that the petitioner submitted was signed by [REDACTED] Chief of Police, [REDACTED] Minnesota, Police Department (certifying official), on October 7, 2011. The certifying official lists the criminal activity of which the petitioner was a victim as first degree aggravated robbery, and Minn. Stat. § 609.245(1), first degree aggravated robbery, is listed as the criminal activity that was investigated or prosecuted. In addition, the incident report indicates that aggravated robbery was investigated. The crime of aggravated robbery is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses "any similar activity" to the enumerated crimes, the regulation defines "any similar activity" as "criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities." 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the aggravated robbery offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. 8 C.F.R. § 214.14(a)(9). The inquiry, therefore, is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

The petitioner has not identified the criminal activity listed at section 101(a)(15)(U)(iii) of the Act that is substantial similar to aggravated robbery, or demonstrated that the nature and elements of aggravated robbery are substantially similar to the nature and elements of any of the qualifying crimes at section 101(a)(15)(U)(iii) of the Act. We recognize that qualifying criminal activity may occur during the commission of a nonqualifying crime; however, the certifying official must provide evidence that the qualifying criminal activity was investigated or prosecuted. The certifying official does not indicate that

any qualifying crime was investigated along with the aggravated robbery and there is no evidence that he or any other law enforcement entity investigated a qualifying crime. As the petitioner has not established that aggravated robbery is substantially similar to a crime at section 101(a)(15)(U)(iii) of the Act, and as the Form I-918 Supplement B fails to indicate that qualifying criminal activity was investigated or prosecuted, the petitioner cannot establish that he was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act. Accordingly, this portion of the director's decision is also withdrawn.<sup>2</sup>

### Helpfulness to Law Enforcement

To be eligible for U nonimmigrant classification, a petitioner must demonstrate, in part, that he has been helpful, is being helpful, or is likely to be helpful to the certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his petition is based. Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3).

On the Form I-918 Supplement B, in Part 4.2, the certifying official indicated "No" to the question about whether the petitioner had been, is being or is likely to be helpful in the investigation and/or prosecution of qualifying criminal activity. The certifying official indicated that because the petitioner did not provide his true name to the police, an investigation and prosecution of the robbery "would have been significantly reduced or impossible."

Section 214(p)(1) of the Act requires a petitioner to submit "a certification from a . . . local law enforcement official . . . investigating criminal activity described in section 101(a)(15)(U)(iii) [of the Act]. . . . that the alien 'has been helpful, is being helpful, or is likely to be helpful' in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii)." The certifying official did not endorse the petitioner's helpfulness such that he is able to meet the helpfulness criterion at section 101(a)(15)(U)(i)(III) of the Act. While the director stated that the petitioner met the statutory eligibility criteria for U nonimmigrant status, the record does not support that finding. The petitioner's Form I-918 U petition is not accompanied by the certification at section 214(p)(1) of the Act and the petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act, and we find additional grounds for denial of the petition.

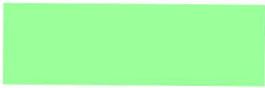
### *Conclusion*

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). Contrary to the director's decision, the petitioner is statutorily ineligible for U nonimmigrant status. The petitioner has failed to establish that he was the victim of a qualifying crime or that he was helpful in the investigation and/or prosecution of qualifying criminal activity. In addition, the petitioner has not established

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<sup>2</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).

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that he 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)(i) of the Act.

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