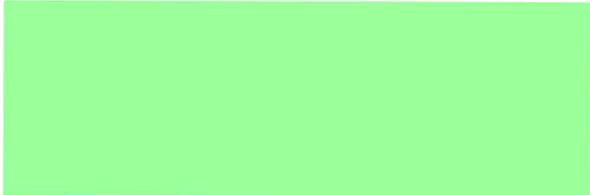


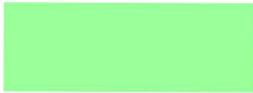
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

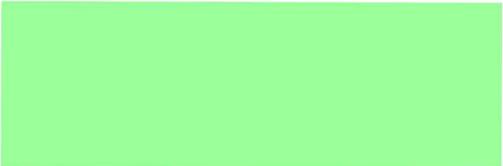
(b)(6)



Date: Office: VERMONT SERVICE CENTER FILE: 
SEP 12 2014

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)

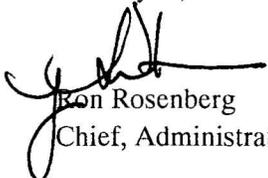
ON BEHALF OF PETITIONER:


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,


Jon 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.

* * *

(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.-

* * *

(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.

* * *

(7) Documentation requirements.-

* * *

(B) Nonimmigrants.-

(i) In general.—Any nonimmigrant who-

(I) Not in possession of a passport valid for a minimum of six months from the date of expiration . . .

* * *

is inadmissible.

* * *

(9) Aliens Previously Removed

* * *

(A) Certain Aliens Previously Removed

* * *

(ii) Other Aliens.—Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien’s departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

* * *

(B) Aliens Unlawfully Present

- (i) In General.-Any alien (other than an alien lawfully admitted for permanent residence) who-

* * *

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

* * *

(C) Aliens Unlawfully Present After Previous Immigration Violations

- (i) In General.-Any alien who –

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted 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 July 1990 without admission, inspection or parole. The record shows that the petitioner attempted to enter the United States on March 25, 2000, by presenting an Arizona birth certificate. She was expeditiously removed from the United States on the same day. The petitioner claims to have departed and reentered the United States in June 2000 without admission, inspection or parole. The petitioner filed the instant Form I-918 U petition with an accompanying Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on February 8, 2013. On February 26, 2013, the director issued two Requests for Evidence (RFE) noting that the petitioner was inadmissible to the United States, and requesting a statement regarding the petitioner's victimization, evidence of the petitioner's helpfulness to the certifying agency, and evidence that the petitioner suffered substantial physical or mental abuse as a result of the qualifying criminal activity. Counsel responded to the RFE's with additional evidence.

On November 5, 2013, the director found the petitioner's response insufficient to overcome her 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)(6)(A)(i) (present without admission or parole), 212(a)(6)(C)(ii) (false claim to U.S. citizenship), 212(a)(7)(B)(i)(I) (not in possession of a valid passport), 212(a)(9)(B)(i)(II) (unlawful presence), 212(a)(9)(C)(i)(I) (unlawfully

present in the United States for one year or more and reentering the United States without being admitted), and 212(a)(9)(C)(i)(II) (being ordered removed and reentering the United States without being admitted) 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 her 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 is rehabilitated and not a danger to the public. She notes that the petitioner wants to remain in the United States to help care for her disabled son. In support of her claims, counsel submits a brief, a new Form I-192¹, additional evidence, and documents already included in the record.

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 sections 212(a)(6)(A)(i) (present without admission or parole), 212(a)(6)(C)(ii) (false claim to U.S. citizenship), 212(a)(7)(B)(i)(I) (not in possession of a valid passport), and 212(a)(9)(C)(i)(II) (being ordered removed and reentering the United States without being admitted) of the Act. The record establishes that on March 25, 2000, the petitioner attempted to enter the United States by falsely claiming U.S. citizenship, and she was expeditiously removed from the United States on the same date. The petitioner admits that she entered the United States in June 2000 without admission or parole. In addition, the petitioner has not submitted evidence that she has a valid passport. As such, the petitioner is inadmissible under sections 212(a)(6)(A)(i), 212(a)(6)(C)(ii), 212(a)(7)(B)(i)(I), and 212(a)(9)(C)(i)(II) of the Act.

In addition, the director found the petitioner inadmissible under sections 212(a)(9)(B)(i)(II) (unlawful presence) and 212(a)(9)(C)(i)(I) (unlawfully present in the United States for one year or more and reentering the United States without being admitted) of the Act. Under section 212(a)(9)(B)(ii) of the Act, an "alien is deemed to be unlawfully present in the United States if the alien is present . . . without being admitted or paroled." However, "[n]o period of time in which an alien is under 18 years of age shall be taken into

¹ This second Form I-192, receipt number [REDACTED] filed on December 9, 2013, was denied by the director on April 1, 2014.

account in determining the period of unlawful presence” See section 212(a)(9)(B)(iii) of the Act. The petitioner was born on April 13, 1979, and she initially entered the United States in July 1990 without admission, inspection or parole. She departed the United States on an unknown date in 2000 and reentered without admission, inspection or parole in June 2000. The petitioner accrued unlawful presence from April 13, 1997, the date she turned 18 years of age, until 2000, when she departed the United States. The petitioner’s departure from the United States following this period of unlawful presence triggered the petitioner’s inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, and her reentry without admission after this period of unlawful presence as well as her reentry after having been ordered removed, triggered the petitioner’s inadmissibility under sections 212(a)(9)(C)(i)(I) and (II) of the Act. Therefore, the petitioner is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(C)(i)(I) and (II) of the Act.

The director also found the petitioner inadmissible under section 212(a)(2)(A)(i)(I) of the Act for being convicted of a crime involving moral turpitude. The record shows that on January 23, 2013, the petitioner was convicted of battery which constitutes domestic violence, in violation of Nevada Revised Statutes (N.R.S.) § 200.485.1A. Under Nevada law, domestic violence occurs “when a person commits one of the following acts against or upon the person’s spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person is or was actually residing, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person’s minor child or any other person who has been appointed the custodian or legal guardian for the person’s minor child: (a) A battery. . . .” Nev. Rev. Stat. § 33.018 (West 2014).

In *Matter of Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006), the Board of Immigration Appeals (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)). Simple assault or battery does not generally involve moral turpitude unless there is some aggravating factor indicative of moral depravity. See *Matter of Fualaau*, 21 I&N Dec. 475, 477 (BIA 1996); *Matter of Short*, 20 I&N Dec. 136, 139 (BIA 1989). This requisite element is satisfied where the offense involves the infliction of serious injury upon a person deserving special protection, such as a family member or a peace officer. See *Matter of Sanudo*, 23 I&N at 970-72. In this case, the record of conviction indicates that the petitioner was convicted of domestic violence battery against her live-in boyfriend. Therefore, the petitioner’s conviction for domestic violence battery is for a crime involving moral turpitude. Accordingly, the petitioner is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Although in his denial decision, the director only indicated that the petitioner was inadmissible to the United States 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)(ii) (false claim to U.S. citizenship), 212(a)(7)(B)(i)(I) (not in possession of a valid passport), 212(a)(9)(B)(i)(II) (unlawful presence), 212(a)(9)(C)(i)(I) (unlawfully present in the United States for one year or more and reentering the United States without being admitted), and 212(a)(9)(C)(i)(II) (being ordered removed and reentering the United States without being

admitted) of the Act, a full review of the record shows that the petitioner is also inadmissible under section 212(a)(9)(A)(ii) (aliens previously removed) of the Act.² The petitioner does not dispute that she was previously removed from the United States. As such, the petitioner is inadmissible under section 212(a)(9)(A)(ii) of the Act as well.

On appeal, counsel does not contest the petitioner's grounds of inadmissibility but instead focuses her assertions on why the director should have favorably exercised his discretion and approved her 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.

² 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 (9th Cir. 2003).