



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 09 2015**

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 or 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 Acting 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. 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.

The director denied the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), because the petitioner was inadmissible to the United States and her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (Form I-192 waiver application), had been denied. The petitioner timely appealed the denial of the Form I-918 U petition.

Applicable Law

Section 101(a)(15)(U) 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 U petition and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The petitioner bears the burden of establishing that she is admissible to the United States or that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i).

An inadmissible alien who seeks U nonimmigrant status must file a Form I-192 waiver application in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility. 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv). 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." Therefore, we do not have jurisdiction to review whether the director properly denied the Form I-192 waiver application. We can only determine whether the director was correct in finding the petitioner inadmissible to the United States and requiring an approved Form I-192 waiver application pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in September 1993 without inspection, admission, or parole. In June 2000, the petitioner was the victim of domestic violence. The petitioner filed the instant Form I-918 U petition on January 22, 2013. She filed a Form I-192 waiver application on the same date.

The director denied the Form I-192 waiver application, finding that the petitioner was inadmissible under sections 212(a)(2)(A)(i)(I) (crimes involving moral turpitude) and 212(a)(6)(A)(i) (present without admission or parole) of the Act. After reviewing the evidence, the director found that the petitioner had failed to demonstrate that she warranted a favorable exercise of discretion. Based on the petitioner's inadmissibility and the denial of her Form I-192 waiver application, the director also denied the petitioner's I-918 U petition.

Analysis

We conduct appellate review on a *de novo* basis. On appeal, the petitioner disputes the director's finding that she is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude.

The petitioner was convicted of aggravated battery of a peace officer in violation of 720 ILCS 5/12-3.05.¹ The petitioner asserts that the Seventh Circuit Court of Appeals found in *Garcia-Meza v. Mukasey*, 516 F.3d 535 (7th Cir. 2007), that the crime of aggravated battery of a peace officer in Illinois is not a crime involving moral turpitude.² However, the Seventh Circuit's finding was not so explicit. Instead, the court found that the Board of Immigration Appeals (BIA) had erred in finding that a conviction under 720 ILCS 5/12-3.05 requires that the officer sustain bodily harm. *Garcia-Meza*, 516 F.3d at 536-7. The court therefore vacated the BIA's decision and remanded the matter to the BIA for a decision on "whether a conviction for battering a peace officer without causing bodily harm amounts to a crime of moral turpitude." *Id.* at 538. Although the court suggested that the BIA would likely find that the crime is not one involving moral turpitude, it conceded that "[a]t the end of the day, it is the Board's prerogative to decide whether Garcia-Meza committed a crime of moral turpitude." *Id.* The Board has not issued a new decision in *Garcia-Meza*. The petitioner provided no further legal analysis or argument to support that she was not convicted of a crime involving moral turpitude.

However, we need not determine whether the petitioner is inadmissible under section 212(a)(2)(A)(i)(I) of the Act because she is inadmissible under section 212(a)(6)(A)(i) of the Act for being present in the United States without admission or parole. Although the majority of the director's decision focused on the petitioner's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, the director also noted at the beginning of her decision that the petitioner is inadmissible under

¹ This statute was renumbered in 2011. The former numbering, which the petitioner uses, was 720 ILCS 5/12-4(d)(6). For consistency with the director's decision, we refer to 720 ILCS 5/12-3.05.

² The petitioner also alleges that "the analysis adopted by USCIS is not allowable under *Matter of Ahortalejo-Guzman*, 25 I&N Dec. 465 (BIA 2011)." The petitioner provides no analysis in support of this assertion. Although the petitioner indicated in her Form I-290B that she would submit a brief or additional evidence within 30 days, we have not received any additional filings as of the date of this decision.

section 212(a)(6)(A)(i) of the Act. The petitioner has not alleged that this was in error.³ The director found that the petitioner has not demonstrated that she merits a waiver as a matter of discretion. We have no jurisdiction to review the denial of a Form I-192 waiver application submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3).

Conclusion

As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

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

³ Furthermore, we note that the director may consider any negative factors or convictions that are present in the petitioner's case, even if they do not reach the level of a crime involving moral turpitude or a separate ground of inadmissibility, to determine whether a waiver would be in the public or national interest. See INA §212(d)(14).