



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: FEB 12 2015 Office: VERMONT SERVICE CENTER FILE: 

IN RE: SELF-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

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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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

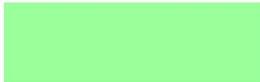
The director denied the petition because she determined that the petitioner is inadmissible to the United States, and her Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) was denied. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner claims that her conviction for shoplifting is her only crime involving moral turpitude and that she qualifies for the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act. However, she concedes that she is inadmissible to the United States on other grounds cited in the Form I-192 denial notice, namely sections 212(a)(6)(A)(i) (entry without inspection), 212(a)(9)(B)(i)(II) (unlawfully present in the United States one year or more), and 212(a)(9)(C)(i)(I) of the Act (unlawfully present for one year and entry without inspection). She submits a brief and additional evidence to demonstrate that the director should favorably exercise discretion and approve the waiver.

Applicable Law and Appellate Jurisdiction

Section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i), 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 he or she is admissible to the United States or that any grounds of inadmissibility have been waived. *See* 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, Application for Advance Permission to Enter as Nonimmigrant (Form I-192 waiver) 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 that may come 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).

Section 212(a) of the Act provides, in pertinent part, that an alien is inadmissible under the following circumstances:



(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 of 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 admission 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.

* * *

(9) Aliens Previously Removed. -

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(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 . . . is inadmissible.

* * *

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico, who claims to have initially attempted to enter the United States in [REDACTED] and was returned to Mexico by the U.S. Border Patrol. She nevertheless entered the United States the same day without being inspected, admitted or paroled. The petitioner claims to have left the United States sometime in [REDACTED] staying in Mexico for approximately one month, before attempting to again reenter the United States. Upon her attempted reentry, the petitioner was again apprehended by the U.S. Border Patrol and returned to Mexico, entering the United States again on the same day without inspection, admission or parole. The petitioner states that she last entered the United States without inspection on [REDACTED], the same day she had been returned to Mexico by U.S. Border Patrol agents for her attempt to enter the United States without inspection.

The petitioner filed the Form I-918, Petition for U Nonimmigrant Status, on February 17, 2012. On March 1, 2013, the director issued a request for evidence (RFE) of, among other things, the petitioner's criminal history. On July 12, 2013, the director issued a second RFE seeking a completed Form I-192 waiver, and evidence for the director to consider in determining the petitioner's admissibility. The petitioner responded on October 7, 2013. On March 21, 2014, the director denied the Form I-918 U

petition because she determined that the petitioner was inadmissible to the United States under sections 212(a)(2)(A)(i), 212(a)(6)(A)(i), 212(a)(9)(B)(i)(II), and 212(a)(9)(C)(i)(I) of the Act. The director issued a separate decision denying the Form I-192 waiver.

On appeal, the petitioner asserts that she should be considered to have been convicted of only three offenses, that her conviction for shoplifting is a misdemeanor that meets the so-called "petty offense" exception, and that the director erroneously failed to exercise discretion in her favor.

Analysis

Upon review of the record, we concur with the director's decision to deny the petition.

The petitioner has the following Arizona offenses on her record:

1. On [REDACTED] the petitioner was arrested by the [REDACTED] Sheriff's Office for Assault. Her plea agreement reflects that on [REDACTED] she pled guilty to the misdemeanor crime of "Assault, a domestic violence offense," in violation of A.R.S. §§ 13-1203(A)(1), (B); 13-601(A)(1); 13-707; and 13-802. She was placed on summary probation and ordered to attend a domestic violence intervention program. (Case No. [REDACTED]).
2. On [REDACTED] the petitioner was arrested by the [REDACTED] Sheriff's office for Assault. (Case No. [REDACTED]). The petitioner provided a letter from the [REDACTED] Court dated May 16, 2013 indicating that "these files have been purged and are no longer in our system."
3. On [REDACTED], the petitioner was arrested by the [REDACTED] Police Department for Assault, a domestic violence offense, in violation of ARS § 13-1203(A)(1). On [REDACTED] the charge was dismissed. (Case No. [REDACTED]).
4. On [REDACTED], the petitioner was arrested by the [REDACTED] Sheriff's office for shoplifting and charged with theft in violation of A.R.S. § 13-1802. [REDACTED]. The stolen property was valued at \$72.99. On [REDACTED] the petitioner was sentenced to a fine of \$500.
5. On [REDACTED], the petitioner was arrested by the [REDACTED] Sheriff's office for various offenses related to driving under the influence (DUI) and her lack of a driver's license and vehicle registration. On [REDACTED], the petitioner pled guilty to Driving Under the Extreme Influence of Intoxicating Liquor, a misdemeanor in violation of A.R.S. §§ 28-1382, 28-1304, 28-1444, 28-1461, 28-3304, 28-3305, 28-3306, 28-3315, 12-114.01; 13-707, 13-802, and 41-1651. (Case No. [REDACTED]). The petitioner was sentenced to 10 days incarceration to be imposed as work release and a fine. The remaining charges were dismissed.

6. On [REDACTED], the petitioner was arrested by the [REDACTED] Sheriff's office for various offenses related to driving under the influence and her lack of a driver's license. She failed to appear in court on [REDACTED] and a warrant for her arrest was issued. The records that the petitioner provided indicate that the case was updated by the court as "completed" without a final conviction on [REDACTED].

The petitioner's DUI and assault convictions do not categorically involve moral turpitude. *See Matter of Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999); *Fernandez-Ruiz v. Gonzales*, 468 F.3d 1159 (9th Cir. 2006). Although the petitioner concedes on appeal that her shoplifting offense is a crime involving moral turpitude, her conviction meets the so-called "petty offense" exception at section 212(a)(2)(A)(ii)(II) of the Act as the maximum possible penalty for the offense is imprisonment of not more than six months and the petitioner was only assessed a fine. Consequently, the petitioner's convictions do not render her inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and we withdraw the director's contrary finding.

Nevertheless, the petitioner concedes on appeal that she is inadmissible under sections 212(a)(6)(A)(I), 212(a)(9)(B)(i)(II), and 212(a)(9)(C)(i)(I) of the Act. We concur with the director's inadmissibility determination and note that unless waived, the petitioner's inadmissibility precludes approval of the petition. 8 C.F.R §§ 212.17, 214.14(c)(2)(iv). In this case, the director also denied the petitioner's waiver application, and the petitioner remains inadmissible under sections 212(a)(6)(A)(i), 212(a)(9)(B)(i)(II), and 212(a)(9)(C)(i)(I) of the Act. As previously noted, we have no jurisdiction to review whether the director should have approved the waiver application as a matter of discretion.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Although the petitioner appears to have met the statutory eligibility requirements for U nonimmigrant classification, she has not established that she is admissible to the United States or that her grounds of inadmissibility have been waived. She is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

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