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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

Date: FEB 13 2015 Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: PETITIONER: [REDACTED]

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 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 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.

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 his Application for Advance Permission to Enter as a Nonimmigrant (Form I-192 waiver) was denied. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner does not contest his inadmissibility on the stated grounds, and instead, submits a brief 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 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).

#### *Facts and Procedural History*

The petitioner, a citizen of Guatemala, represents that he entered the United States on March 17, 1993 without inspection, admission, or parole by an immigration officer. USCIS issued the petitioner a Notice to Appear on March 13, 2007 and referred the matter to the immigration court. The petitioner remains in removal proceedings.

The petitioner filed the instant Form I-918 U petition on August 22, 2011, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). The director subsequently issued a Request for Evidence (RFE) of the petitioner's admissibility and valid passport,

among other issues, and informed the petitioner that an application for a waiver of inadmissibility and supporting documentation would be required.

The petitioner filed a Form I-192 on July 30, 2012, and on June 26, 2013, the director issued a Notice of Intent to Deny (NOID) the Form I-192 application, noting that the petitioner was inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole), 212(1)(7)(B)(i)(I) (no valid passport), and 212(a)(2)(A)(i)(I) (crimes involving moral turpitude) of the Act. The petitioner timely responded to the NOID with a brief and additional documentation. After reviewing the evidence submitted in support of the waiver application, the director ultimately determined that the petitioner was inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole) and 212(1)(7)(B)(i)(I) (nonimmigrant without a valid passport) of the Act, and denied the Form I-192 finding that the petitioner had not demonstrated that he warranted a favorable exercise of discretion. As the petitioner was found inadmissible and his Form I-192 had been denied, the director consequently denied the petitioner's Form I-918 U petition. The petitioner timely appealed the denial of the Form I-918 U petition.

#### *Analysis*

As we do not have jurisdiction to review whether the director properly denied the Form I-192, the only issue before us is whether the director was correct in finding the petitioner inadmissible to the United States, thus requiring an approved Form I-192.

On appeal, the petitioner argues that the director gave inappropriate weight to his juvenile record, mischaracterized his adult crimes, and failed to consider mitigating circumstances and positive factors in determining that the petitioner did not warrant a favorable exercise of discretion with respect to his Form I-192. Specifically, the petitioner takes issue with the director's summary of his criminal history, noting that several of the discussed offenses were part of his juvenile record, and that he has only one adult conviction for a crime involving moral turpitude. We agree that the petitioner has only one conviction for a crime involving moral turpitude: a misdemeanor conviction for forgery under California Penal Code section 470(a). *See De Martinez v. Holder*, 770 F.3d 823, 825 (9th Cir. 2014) (noting that "crimes requiring proof of an 'intent to defraud' necessarily involve moral turpitude."). The petitioner was sentenced to 36 months of probation, 2 days in the county jail, fines and fees. Charged as a misdemeanor, this offense is punished by a maximum sentence of one year in the county jail. Cal. Penal Code §473; §17(b)(4). The petitioner's forgery conviction therefore falls under the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act, and does not render the petitioner inadmissible for a conviction for a crime involving moral turpitude. The petitioner's other adult criminal conviction, under California Penal Code section 242-243(b) for simple battery committed against an emergency medical technician, is not a crime involving moral turpitude. *See Galeana-Mendoza v. Gonzales*, 465 F.3d 1054, 1059 (9th Cir. 2006) (noting that Cal. Penal Code section 243(e), like section 243(b), adds to the simple battery definition of section 242 only the element of a specific class of individuals, and that the full range of conduct proscribed by the statute does not involve moral turpitude); *see also Matter of Sanudo*, 23 I&N Dec. 968, 972-73 (BIA 2006) (finding that California's simple battery statute, even in cases where the battery is committed against a protected class, does not require more than minimal nonviolent touching, and is thus not a crime involving moral turpitude).

However, although the director notified the petitioner in the NOID that he was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for a conviction of a crime involving moral turpitude, he correctly declined to find the petitioner inadmissible under this section in his January 6, 2014 decision denying the waiver.

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) and 212(a)(7)(B)(i)(I) (not in possession of a valid passport) of the Act. The petitioner does not dispute that he is present in the United States without admission or parole, and he has not provided a copy of a valid passport. The petitioner is, therefore, inadmissible under sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(I) of the Act and we lack jurisdiction to review the director's decision to deny the petitioner's Form I-192.

*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). The petitioner has not established 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, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

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