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: MAR 1 1 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 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 is inadmissible to the United States and her Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) had been denied. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner does not contest that she is inadmissible on the stated grounds, but she claims that her conviction meets the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act and asks that the director favorably exercise discretion and approve her waiver application.

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 is a native and citizen of Mexico who claims to have legally first entered the United States on August 18, 1988.[1] She returned to Mexico after she was impregnated by her uncle, and claims to have returned to the United States sometime between 1992 and 1996 without inspection, admission, or parole. The petitioner filed the instant Form I-918 U petition on July 22, 2011, with an accompanying U

[1] The petitioner has not provided any evidence that her 1988 entry was a legal entry, and Department of Homeland Security records to not contain any record of said legal entry.

Nonimmigrant Status Certification (Form I-918 Supplement B). On the same day, the petitioner filed a Form I-192. On January 5, 2012, the director issued a Request for Evidence (RFE) of the petitioner's admissibility and conviction records, and the petitioner responded with additional evidence.

The director ultimately denied the Form I-192, finding that the petitioner was inadmissible under the following sections of the Act: 212(a)(2)(A)(i)(I) (conviction of crimes involving moral turpitude (CIMT)), 212(a)(6)(A)(i) (present without admission or parole), and 212(a)(7)(B)(i)(I) (not in possession of a valid passport). After reviewing the evidence submitted in support of the waiver application, the director determined that the petitioner had not demonstrated that she warranted a favorable exercise of discretion, and denied the Form I-192. As the petitioner was found inadmissible and her Form I-192 had been denied, the director consequently denied the petitioner's Form I-918 U petition. The petitioner filed a timely appeal of the denial of her petition.

Analysis

We conduct appellate review on a *de novo* basis. 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). The petitioner does not dispute that she 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.

Although on appeal the petitioner did not dispute that she is inadmissible under section 212(a)(7)(B)(i)(I) (not in possession of a valid passport) of the Act, the record shows that she is not inadmissible under this section of the Act. The record contains a copy of the petitioner's valid passport, and the director's finding of inadmissibility on this ground will therefore be withdrawn.

On appeal, the petitioner does not dispute that she is inadmissible to the United States for being convicted of crimes involving moral turpitude but claims that her convictions meet the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act. To qualify for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act, the petitioner must have committed only one crime involving moral turpitude, the maximum penalty possible for that crime must not exceed imprisonment for one year and, if she was convicted of such crime, she must not have been sentenced to a term of imprisonment in excess of six months.

The record shows that on November the petitioner was convicted of inflicting corporal injury on a spouse/cohabitant and domestic violence battery, in violation of sections 273.5(a)[2] and 242/243(E)[3] of the

[2] Under California law, "[a]ny person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) [describing different familial, domestic, or cohabitating relationships] is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year . . . ." Cal. Penal Code § 273.5(a) (West 2014).

[3] Section 242 of the Cal. Penal Code states, "[a] battery is any willful or unlawful use of force or violence upon the person or another." (West 2014). Domestic violence battery occurs when the battery is committed "against a spouse, a person with whom the defendant is cohabitating, a person who is the parent of the defendant's child . . . ." Cal.

California Penal Code (CPC), respectively, for which she was sentenced to 15 days incarceration, 16 weeks of domestic violence and parenting classes, and three years of probation.[4] The maximum possible term of imprisonment for a violation of CPC § 273.5(a) exceeds one year; and therefore, the petitioner's conviction for a crime involving moral turpitude does not meet 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 applies to her. Accordingly, the petitioner is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for being convicted of a crime involving moral turpitude.

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). 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.

Penal Code § 243(E)(1) (West 2014). A violation of CPC § 243(E)(1) is punishable by a fine and/or imprisonment in a county jail for a period of not more than one year.

[4] Courts have held that a conviction under CPC § 273.5(a) is not categorically a crime involving moral turpitude, but that CPC § 273.5(a) is a divisible statute for which some subsections would qualify as a CIMT and others would not. *See Cervantes v. Holder*, 772 F.3d 583, 588 (9th Cir. 2014); *Morales–Garcia v. Holder,* 567 F.3d 1058, 1065 (9th Cir. 2009); *see also Grageda v. INS,* 12 F.3d 919, 922 (9th Cir.1993). Here, the record of conviction shows that the petitioner assaulted the father of her children, a person of whom she is in a special or familial relationship with, and therefore her conviction is for a crime involving moral turpitude. *See Morales–Garcia v. Holder,* 567 F.3d at 1065; *Matter of Tran*, 21 I. & N. Dec. 291, 294 (BIA 1996).