



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF L-K-B-F-

DATE: FEB. 5, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks “U” nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (the Act), § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the Form I-918, Petition for U Nonimmigrant Status, because the Petitioner was inadmissible to the United States and her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, was denied. On appeal, the Petitioner argues that the Director erred in finding her inadmissible under sections 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I), (conviction of certain crimes), 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i) (fraud or misrepresentation) and 212(a)(7)(B)(i)(I), 8 U.S.C. 1182(a)(7)(B)(i)(I) (lack of possession of valid documents), and that the Form I-192 should be approved in the exercise of discretion.

#### I. APPLICABLE LAW

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 and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion which otherwise would preclude the benefit. The Petitioner bears the burden of establishing that she is admissible to the United States. *See* 8 C.F.R. § 214.1(a)(3)(i).

For persons 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 the Form I-918 in order to waive any applicable ground(s) 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 such, we do not have jurisdiction to review whether the Director properly denied the Form I-192, and thus do not consider whether the Petitioner does or does not merit a waiver. We do have jurisdiction, however, to consider whether the Director was correct in finding the Petitioner

inadmissible to the United States in the first instance and, therefore, whether a waiver was required in the first instance.

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 . . .[.]

...

(6)(C) Misrepresentation.

(i) In general. Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act . . .

...

(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.

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Spain who last entered the United States on September 5, 2003 as a 90-day visitor under the Visa Waiver Program. She married her former spouse, a U.S. citizen, on [REDACTED] 2004, in Montana. The Petitioner and her spouse were divorced on [REDACTED] 2009. On [REDACTED] 2011, the U.S. District Court of Montana, [REDACTED] Division, convicted the Petitioner of fraudulent use or possession of an alien registration receipt card in violation of Title 18, Section 1546<sup>1</sup> of the United States Code pursuant to her guilty plea. At the time of the Petitioner's conviction, 18 U.S.C. § 1546 stated, in part:

Fraud and misuse of visas, permits, and other documents

- (a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

...

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact— . . .

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

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<sup>1</sup> 18 U.S.C. § 1546 comprises two subsections, (a) and (b). Subsection (b) is not pertinent to this case, and for ease of reading, we will refer to 18 U.S.C. § 1546 without reference to subsection (a).

18 U.S.C.A. § 1546 (West 2011).

On November 5, 2013, the Petitioner filed a Form I-918, seeking U nonimmigrant classification as a victim of certain qualifying criminal activity, and a Form I-192, seeking a waiver of her grounds of inadmissibility. On April 8, 2014, the Director denied the Form I-918 and the Form I-192. Although the Director determined that the Petitioner was statutorily eligible for U nonimmigrant status, the Director also determined that the Petitioner is inadmissible to the United States and had not demonstrated that she merited a favorable exercise of the Director's discretion to waive her grounds of inadmissibility. In particular, the Director determined that the Petitioner's conviction under 18 U.S.C. § 1546 was a crime involving moral turpitude (CIMT) and therefore a basis of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. The Director also found that the same crime was of a fraudulent nature and separately rendered the Petitioner inadmissible under section 212(a)(6)(C)(i) of the Act. Finally, the Director found that the Petitioner was inadmissible because she did not possess a valid passport in contravention of section 212(a)(7)(B)(i)(I) of the Act.<sup>2</sup> The Petitioner timely appealed the denial of the Form I-918.

### III. ANALYSIS

We review these proceedings *de novo*. Our review of the record, as supplemented on appeal, is limited to whether or not the Petitioner is inadmissible and therefore requires a waiver of her ground(s) of inadmissibility before she can be granted U nonimmigrant status.

#### A. Inadmissibility for Commission of a Crime Involving Moral Turpitude

The term, "crime involving moral turpitude" is not defined in the Act. In interpreting the phrase the Board of Immigration Appeals (BIA) held, in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general . . . .

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

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<sup>2</sup> The Director also found, in the context of the denial of the Form I-192, that the Petitioner's conviction under 18 U.S.C. § 1546 is an aggravated felony, as defined under section 101(a)(43)(M)(i) of the Act, 8 U.S.C. § 1101(a)(43)(M)(i) as an offense that "involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000." Because a conviction for an aggravated felony is not a ground of inadmissibility, we do not address this finding.

(Citations omitted.)

The U.S. Court of Appeals for the Ninth Circuit recently clarified the process for determining when a violation of a statute that prohibits several forms of conduct categorically involves moral turpitude. See *Almanza-Arenas v. Lynch*, Nos. 09-71415, 10-73715, 2015 WL 9462976 (9th Cir. Dec. 28, 2015) (*en banc*). In *Almanza-Arenas*, the Ninth Circuit applied the three-step process set forth in *Descamps v. United States*, — U.S. —, —, 133 S.Ct. 2276, 2281, 186 L.Ed.2d 438 (2013), which was summarized by the Ninth Circuit in *Lopez-Valencia v. Lynch*, 798 F.3d 863, 867–68 (9th Cir. 2015):

At the first step, we compare the elements of the state offense to the elements of the generic offense defined by federal law. If this “categorical approach” reveals that the elements of the state crime are the same as or narrower than the elements of the federal offense, then the state crime is a categorical match and every conviction under that statute qualifies as [a crime involving moral turpitude]. When a statute is “overbroad,” meaning that it criminalizes conduct that goes beyond the elements of the federal offense, we turn to step two: determining whether the statute is “divisible” or “indivisible.” If the statute is indivisible, “our inquiry ends, because a conviction under an indivisible, overbroad statute can never serve as a predicate offense.” Only when a statute is overbroad and divisible do we turn to step three -- the “modified categorical approach.” At this step, we may examine certain documents from the defendant’s record of conviction to determine what elements of the divisible statute he was convicted of violating.

798 F.3d at 867–68.

In *Almanza-Arenas*, the Ninth Circuit determined whether a conviction under California Vehicle Code § 10851(a) categorically qualifies as the generic offense of a CIMT such that the crime is “vile, base, or depraved” and “violates accepted moral standards.” *Almanza-Arenas*, at \*3, citing *Ceron v. Holder*, 747 F.3d 773, 779 (9th Cir. 2014) (*en banc*) (quoting *Latter-Singh v. Holder*, 668 F.3d 1156, 1161 (9th Cir. 2012)). California Vehicle Code § 10851(a) proscribes both conduct that does not amount to a CIMT (*i.e.*, the temporary taking of a vehicle, commonly referred to as “joyriding”) and conduct that would constitute a crime of moral turpitude (*i.e.*, the permanent taking of a vehicle). Accordingly, the Ninth Circuit held that California Vehicle Code § 10851(a) is overbroad because it “criminalizes conduct that goes beyond the elements of the federal offense” and is not a categorical match with the generic offense of a CIMT. *Almanza-Arenas*, at \*3 (quoting *Lopez-Valencia v. Lynch*, 798 F.3d at 867-68).

The Ninth Circuit then examined whether California Vehicle Code § 10851(a) is a divisible or indivisible statute and, in doing so, relied on the method for distinguishing divisible statutes from indivisible statutes set forth in *Descamps*. According to the Supreme Court’s decision in *Descamps*, the distinction is that indivisible statutes may contain multiple, alternative means of committing the crime while divisible statutes contain multiple, alternative elements of functionally separate crimes.

133 S.Ct. at 2293; see *United States v. Cabrera-Gutierrez*, 756 F.3d 1125, 1137, n. 16 (9th Cir. 2014) (noting that, “under *Descamps*, what must be divisible are the elements of the crime, not the mode or means of proving an element”). The Ninth Circuit examined the text of California Vehicle Code § 10851(a), which uses disjunctive phrasing to create different means of committing the same offense. *Almanza-Arenas*, at \*4. Specifically, the Ninth Circuit reasoned that:

The first element can be completed by either driving a vehicle *or* taking a vehicle (which vehicle belongs to another person). The second element can be completed by driving or taking the vehicle without the consent of the owner. The third element (the element at issue here) can be completed by either permanently *or* temporarily depriving the owner of his or her vehicle. The means or methods of committing the element of the offense do not make the statute divisible, because the trier of fact does not need to agree as to whether the deprivation was temporary or permanent (the length of time during which the deprivation occurred).

*Id.* On that basis, the Ninth Circuit determined that California Vehicle Code § 10851(a) is an indivisible statute. *Id.* The Ninth Circuit then confirmed its interpretation by examining the record of conviction to see whether California Vehicle Code § 10851(a) displays alternative elements instead of alternative means of committing the same crime. *Id.*; see *Shepard v. United States*, 544 U.S. 13, 16, 26 (2005); *Matter of Millian-Dubon*, 25 I&N Dec. 197 (BIA 2010). The indictment in *Almanza-Arenas* charged that the defendant violated California Vehicle Code § 10851(a) by taking a car “with intent either permanently or temporarily to deprive the owner” of the car and the Ninth Circuit held that the two forms of intent were alternative means of violating California Vehicle Code § 10851(a) instead of two separate crimes and confirmed that California Vehicle Code § 10851(a) is an indivisible statute. *Almanza-Arenas*, at \*5.

Finally, the Ninth Circuit examined California's pattern criminal jury instructions for persons who are charged with violating California Vehicle Code § 10851(a) which provide that a jury must find that a person took or drove a vehicle belonging to another person, the other person had not consented to the taking or driving of his or her vehicle, and, when the person took or drove the vehicle, he or she had the specific intent to deprive the owner either permanently or temporarily of his or her title to or possession of the vehicle. *Id.*, at \*8. The Ninth Circuit held that, “this jury instruction makes clear that California law treats the disjunctive phrases in the statute as means of committing the offense not separate elements creating new crimes [and] . . . [t]herefore, the distinction between whether Almanza intended to permanently or temporarily deprive the owner of his or her vehicle need not be determined by an unanimous jury.” The Ninth Circuit held in *Almanza-Arenas* that, “because the least of the acts criminalized under section 10851(a) is a temporary taking, the statute is not categorically a crime involving moral turpitude.”

In order to determine whether the Petitioner was convicted of a CIMT, we follow the analysis of the Ninth Circuit in *Almanza-Arenas*, and we first determine whether a conviction under 18 U.S.C. § 1546 categorically qualifies as the generic offense of a CIMT. 18 U.S.C. § 1546 applies to “[w]hoever knowingly . . . utters, uses, attempts to use, possesses, obtains, accepts, or receives” false

immigration documents. The Board of Immigration Appeals has held that mere possession of false immigration documents does not necessarily entail fraudulent or deceitful conduct and would not categorically constitute a CIMT. *Matter of Serna*, 20 I&N Dec. 579, 585 (BIA 1992) (holding that a conviction for possession of a false immigration document without the intent to use it to defraud the government is not a CIMT). Therefore, because possession is one of the offenses listed under 18 U.S.C. § 1546 and it does not involve moral turpitude, the statute does not categorically involve moral turpitude.

Following *Almanza-Arenas*, we must then determine whether the statute is divisible, such that it lists potential elements of the offense in the alternative. 18 U.S.C. § 1546 penalizes a variety of acts as alternative elements of the same offense. A person charged under 18 U.S.C. § 1546 could be found to have violated the statute if that person utters, uses, attempts to use, possesses, obtains, accepts, or receives false immigration documents. The commission of any single act or a combination of any of the acts listed under 18 U.S.C. § 1546 violates the statute.

As explained in *Almanza-Arenas* and as widely-employed in the Ninth Circuit, an examination of applicable jury instructions is helpful to determine whether the acts proscribed by 18 U.S.C. § 1546 are offenses with alternative elements or means. *See Rendon v. Holder*, 764 F.3d 1077 (9th Cir. 2014) and *Chavez-Solis v. Lynch*, 803 F.3d 1004 (9th Cir. 2015). The Model Jury Instructions for the Ninth Circuit clarify that the prohibited acts under 18 U.S.C. § 1546(a) are offenses with alternative elements. The comments section to the Model Jury Instructions confirms that different jury instructions, with alternative elements, are used depending upon the offensive element of 18 U.S.C. § 1546 with which a defendant has been charged. For example, the Model Jury Instructions include the following possible instructions:

- 8.132 Fraud -- Forged, Counterfeited, Altered or Falsely Made Immigration Document
- 8.133 Fraud -- Use or Possession of Immigration Document Procured by Fraud
- 8.134 Fraud -- False Statement on Immigration Document

According to Model Jury Instruction 8.132, a jury must find that a defendant forged, counterfeited, altered, or falsely made an immigrant or non-immigrant, visa, permit, border crossing card, alien registration receipt card and acted knowingly in doing so. Model Jury Instruction 8.133 requires a jury to find that a defendant knowingly uttered, used, attempted to use, possessed, obtained, accepted, received an immigrant or non-immigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States and the defendant knew the document to be forged, counterfeited, altered, falsely made, to have been procured by means of any false claim or statement, otherwise procured by fraud, or unlawfully obtained. Model Jury Instruction 8.134 is similarly detailed and requires a jury to find that a defendant made or subscribed as true a false statement, acted with knowledge that the statement was untrue, the statement was material to the activities or decisions of a specific immigration agency, and had a natural tendency to influence, or was capable of influencing, the agency's decisions or activities, and was made under

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oath or penalty of perjury, and the statement was made on an application, affidavit or other document required by immigration laws or regulations.

It is clear from these instructions that significantly different forms of action are punishable under 18 U.S.C. § 1546. The first jury instruction covers a knowing forgery or counterfeiting – the action of making a false document. The second instruction deals generally with the use or possession of a false document for the specific purpose of entry into the United States or evidence of authorized stay or employment. The third contemplates knowingly making false statements in or with respect to documents required under the immigration laws and regulations. These instructions, which only deal with part of the conduct punishable under 18 U.S.C. § 1546, describe markedly differing forms of conduct that only fall generally under the rubric of “fraud and misuse of visas, permits, and other documents” as this section of the U.S. Code is labelled. The sweeping nature of the conduct punishable under 18 U.S.C. § 1546, as further evidenced by the many separate and differing Model Jury Instructions, demonstrate that the acts punishable thereunder constitute multiple, alternative elements of functionally separate crimes, and, accordingly, 18 U.S.C. § 1546 is a divisible statute.

Because 18 U.S.C. § 1546 is divisible, following *Almanza-Arenas*, we then examine the record of conviction to evaluate which elements of the offense were the basis for the conviction and whether we can determine whether any of those elements constitutes a CIMT. We may examine the record of conviction, including the indictment, judgment of conviction, written plea agreement, transcript of any plea colloquy, and the terms of any plea agreement. *See Shepard v. United States*, 544 U.S. at 16 and 26 (2005); *Matter of Millian-Dubon*, 25 I&N Dec. 197 (BIA 2010). In addition, when a plea agreement makes direct reference to a specific count in the indictment, the indictment may be considered in conjunction with other documents in the record to determine whether the Petitioner pled guilty to a CIMT. *Murillo-Prado v. Holder*, 735 F.3d 1152, 1157 (9th Cir. 2013).

The evidence in the record of conviction demonstrates that the Petitioner’s conviction involved fraud or deceit and, accordingly, is a CIMT. Count II of the indictment, to which the Petitioner pled guilty, states, in pertinent part, that, on or about [REDACTED] 2007, in [REDACTED] Montana, the Petitioner “did knowingly possess *and* use . . . a Resident Alien Registration Receipt Card (Form I-551), knowing it to be forged, counterfeited, altered, and falsely made, and to have been procured by fraud and unlawfully obtained, in violation of 18 U.S.C. § 1546(a)” (emphasis added). In addition, paragraph four of the plea agreement states: “Admission of Guilt: The defendant will plead guilty because she is indeed guilty of the charge contained in Count II of the Indictment.” The record is clear that the alien registration receipt card did not belong to the Petitioner but was falsely obtained and used by the Petitioner to defraud state and municipal government agencies. According to the offer of proof, to which the Petitioner admitted pursuant to entering the guilty plea for violating 18 U.S.C. § 1546(a), the Petitioner “possessed an alien registration receipt card that had been forged, counterfeited, procured by fraud, or otherwise unlawfully obtained . . . in connection with an application . . . for Food Stamp and Medicaid benefits.”

In her brief on appeal, the Petitioner asserts that she was not convicted of a CIMT because she pled guilty to “possession or use of a false alien registration card” and that possession of false

immigration documents does not necessarily entail fraudulent or deceitful conduct. See *Matter of Serna, supra*. The Petitioner refers to the second paragraph of the plea agreement, in which the Petitioner “agree[d] to plead guilty to Count II of the Indictment, which charges Fraudulent Use or Possession of an Alien Registration Receipt Card in violation of 18 U.S.C. § 1546” (emphasis added) and that, in pleading guilty to Count II, the Petitioner acknowledged that she “knowingly used or possessed an alien registration receipt card . . .” (emphasis added). However, the plea agreement is otherwise clear that the Petitioner plead guilty to Count II of the indictment, which charges that the Petitioner “did knowingly possess and use . . . a Resident Alien Registration Receipt Card (Form I-551), knowing it to be forged, counterfeited, altered, and falsely made, and to have been procured by fraud and unlawfully obtained, in violation of 18 U.S.C. § 1546(a),” and that she used this card in procuring financial benefits to which she was not entitled. Therefore, the record of conviction is unambiguous that the Petitioner was convicted of a CIMT.

Based on the foregoing, the Petitioner’s conviction under 18 U.S.C. § 1546 is a CIMT and, therefore, is a proper basis of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

#### B. Inadmissibility for Fraud/Misrepresentation

The Director also determined that the Petitioner was inadmissible under section 212(a)(6)(C)(i) of the Act. In particular, the Director found that, “[b]ased on the fraudulent nature of the crime for which you [the Petitioner] were convicted, USCIS finds that you are subject to the provisions of INA Section 212(a)(6)(C)(i) . . . .” In *Matter of G-G-*, I&N Dec. 161 (BIA 1956), the Board of Immigration Appeals (BIA) held that “fraud” consists of a false representation of a material fact made with knowledge of its falsity and with intent to deceive the immigration officer, who then acts upon his or her belief of the fraud. Willful misrepresentation occurs when the misrepresentation was deliberate and voluntary. *Forbes v. I.N.S.*, 48 F.3d 439, 442 (9th Cir. 1995). Proof of an intent to deceive is not required; rather, mere knowledge of the falsity of a representation is sufficient. *Id.*

The Petitioner was convicted under 18 U.S.C.A. § 1546, which criminalizes the “fraud and misuse of visas, permits, and other documents” and the Petitioner plead guilty to the use or possession of a fraudulently-obtained alien registration receipt card. The reviewable evidence supports the Director’s finding that the Petitioner made a false representation of a material fact with knowledge of its falsity and with intent to deceive. However, fraud and misrepresentation under section 212(a)(6)(C)(i) of the Act require fraud or misrepresentation to occur in order to gain a “visa, other documentation, or admission into the United States or other benefit provided under this Act.” There is no evidence in the record that the Petitioner was convicted for using or possessing a fraudulently-obtained alien registration receipt card in order to gain a benefit provided under the Immigration and Nationality Act, as the Petitioner’s conviction relates to her fraudulent receipt of housing and other benefits under the laws of the State of Montana. Accordingly, we withdraw that part of the Director’s decision with respect to the Petitioner’s inadmissibility under section 212(a)(6)(C)(i) of the Act.

C. Inadmissibility for Lack of a Valid Passport

A review of the record before us does not support a finding of inadmissibility under 212(a)(7)(B)(i)(I) of the Act. On December 4, 2014, the Petitioner provided a copy of a valid, unexpired passport and, accordingly, the Director's decision with respect to a finding of inadmissibility under 212(a)(7)(B)(i)(I) of the Act is also withdrawn.

IV. CONCLUSION

The Petitioner is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a CIMT. No waiver for this ground of inadmissibility has been granted. As set forth in 8 C.F.R. § 214.1(a)(3)(i), the Petitioner is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden. Accordingly, the appeal is dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of L-K-B-F-*, ID# 16171 (AAO Feb. 5, 2016)