



U.S. Citizenship  
and Immigration  
Services



815

Date: **OCT 22 2012** 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:

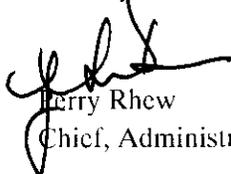


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Jerry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Vermont Service Center (the director) denied the Petition for U Nonimmigrant Status (Form I-918 U 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.

*Applicable Law*

Section 101(a)(15)(U)(i) 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.

Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

(6) Illegal entrants and immigration violators.-

(A) Aliens present without permission 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.

(7) Documentation requirements.-

(B) Nonimmigrants.-

(i) In general.-Any nonimmigrant who-

- (I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period . . . is inadmissible.

Section 212(a)(2) of the Act pertains to criminal and related grounds of inadmissibility and states, in pertinent part:

(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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(D) Prostitution and commercialized vice. An alien who-

(i) [h]as engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status . . . is inadmissible.

All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 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 an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

#### *Facts and Procedural History*

The petitioner is a native and citizen of Mexico who last entered the United States on April 27, 2000, without being inspected, admitted or paroled by an immigration officer. The petitioner filed the instant Form I-918 U petition and the Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on August 2, 2010. The director issued a Request for Evidence (RFE) on February 3, 2011, asking the petitioner to submit, among other items, dispositions of various arrests and evidence to support the waiver application. The petitioner, through counsel, responded to the RFE. On December 19, 2011, the director denied the Form I-918 petition and the Form I-192 application. In his decision on the Form I-918 petition, the director stated that the petitioner was ineligible for U nonimmigrant status because he was inadmissible and his request for a waiver of inadmissibility had been denied. The petitioner timely appealed that denial.

On appeal, counsel submits a brief and additional evidence. Counsel does not dispute the director's determination that the petitioner is inadmissible to the United States. Instead, counsel asserts that the petitioner merits a favorable exercise of discretion to waive his grounds of inadmissibility.

#### *Analysis*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the record, we concur with the director's decision to deny the petition because the petitioner is inadmissible to the United States.

There is no appeal of a decision to deny a Form I-192 waiver application. 8 C.F.R. § 212.17(b)(3). Consequently, the AAO lacks jurisdiction to review whether the director properly denied the Form I-192 waiver application. The only issue before the AAO on appeal is whether the director was correct in finding the petitioner to be inadmissible and requiring an

approved waiver pursuant to the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

The record shows that the petitioner is inadmissible to the United States on each of the grounds cited to by the director. The petitioner does not deny that he last entered the United States without being inspected, admitted or paroled by an immigration officer. Therefore, he is inadmissible under section 212(a)(6)(A)(i) of the Act. The petitioner has not shown that he has a valid passport. Thus, he is also inadmissible under section 212(a)(7)(B)(i)(I) of the Act.

The petitioner is also inadmissible based on his multiple criminal convictions. The record shows, and the petitioner admits to, the following convictions:

- On or about November 1995: arrested for and later convicted of disorderly conduct – prostitution and sentenced to 40 days in jail and 24 months of probation.
- On or about March 1998: arrested for and later convicted of disorderly conduct – prostitution and sentenced to 40 days in jail and 24 months of probation.
- On or about April 1996: arrested for and later convicted of disorderly conduct – prostitution and sentenced to 40 days in jail and 24 months of probation.
- On or about March 1997: arrested for and later convicted of theft and sentenced to 7 days in jail and 24 months of probation.
- On or about September 2002: arrested for and later convicted of loitering - intent to prostitute and sentenced to 24 months of probation.
- On or about March 2003: arrested for and later convicted of loitering - intent to prostitute and sentenced to 28 days in jail and 24 months of probation.

The AAO notes that it has long been established that inadmissibility under section 212(a)(2)(D) of the Act must be based on a regular pattern of conduct, rather than isolated acts. *See Matter of T*, 6 I&N Dec. 474, 477 (BIA 1955) (“[T]he general rule is that to constitute ‘engaging in’ there must be substantial, continuous and regular, as distinguished from casual, single or isolated, acts.”); *see also Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549, 553-54 (BIA 2008); *see also Kepilino v. Gonzales*, 454 F.3d 1057, 1061 (9<sup>th</sup> Cir. 2006) (“The term ‘prostitution’ means engaging in promiscuous sexual intercourse for hire. A finding that an alien has ‘engaged’ in prostitution must be based on elements of continuity and regularity, indicating a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.”).

Here, the petitioner has been convicted of prostitution related offenses no less than five times over the course of approximately eight years. The convictions all occurred within 10 years of the filing of the instant Form I-918 U petition. The record shows that in addition to evidence of the

convictions, the petitioner has admitted that he prostituted himself in order to pay for food and rent. The petitioner is thus inadmissible under section 212(a)(2)(D)(i) of the Act.

The petitioner has been convicted of prostitution and theft, which are crimes involving moral turpitude. It is well established that the crime of practicing prostitution involves moral turpitude. *Matter of W*, 4 I&N Dec. 401, 401-404 (BIA 1951); see *Matter of Turcotte*, 12 I&N Dec. 206, 207 (BIA 1967). Thus, we find that the petitioner's multiple convictions involving prostitution are crimes of moral turpitude.

The petitioner's 1997 theft conviction is also a conviction for a crime involving moral turpitude. The Ninth Circuit Court of Appeals in *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1160 (9th Cir. 2009), determined that petty theft under the statute for which the petitioner was convicted, Cal. Penal Code § 484(a), is a crime categorically involving moral turpitude. Thus, the petitioner is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of acts involving moral turpitude.<sup>1</sup>

The petitioner therefore cannot be granted U-1 nonimmigrant status because he is inadmissible under sections 212(a)(2), (6) and (7) of the Act and his Form I-192 has been denied.

### *Conclusion*

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4). Although the petitioner has met the statutory eligibility requirements for U nonimmigrant classification, he 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).

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

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<sup>1</sup> Because there are multiple theft convictions, the "petty offense" exception in section 212(a)(2)(A)(ii) of the Act does not apply.