

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N. W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

Date: [REDACTED] Office: VERMONT SERVICE CENTER File: A [REDACTED]
EAC [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Nonimmigrant Classification as a Victim of Qualifying Criminal Activity 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:

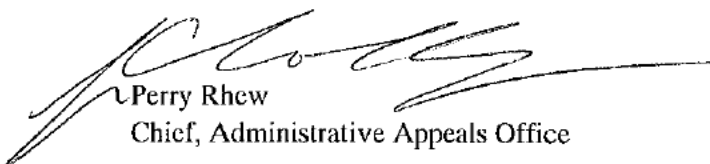
[REDACTED]

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,


Perry Rhew
Chief, Administrative Appeals Office

[REDACTED]

DISCUSSION: The Director, 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. 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.

Section 101(a)(15)(U)(i) of the Act, provides for U nonimmigrant classification to aliens who have suffered substantial physical or mental abuse as a result of having been the victim of certain criminal activity and 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 director denied the petition because the petitioner is not admissible to the United States and her Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) was denied. On appeal, counsel submits a Notice of Appeal (Form I-290B), a brief, additional evidence and copies of documentation already in the record. Counsel disputes the director's determination that the petitioner is inadmissible to the United States under section 212(a)(2)(D)(i) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i); however, counsel concedes that the petitioner is otherwise inadmissible and requires a waiver of grounds of inadmissibility. On appeal, counsel states that a new Form I-192 has been filed with extensive new evidence which should permit a waiver of the petitioner's grounds of inadmissibility.

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 a Form I-192 application 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." The AAO does not have jurisdiction to review whether the director properly denied a Form I-192 waiver application; therefore, the AAO cannot consider counsel's arguments on appeal that the original Form I-192 or the new Form I-192 waiver applications should have been granted and that the petitioner merits a favorable exercise of discretion. 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 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

The record reflects that the petitioner pled guilty to and was convicted of knowingly offering to engage in sexual conduct, to-wit: sexual intercourse, for a fee in violation of section 43.02(a) of the Texas Penal Code (TPC) on [REDACTED]. While the petitioner has been convicted of a single incident of

¹ On [REDACTED] the director denied a new Form I-192 (receipt number EAC [REDACTED]) which was filed concurrently with the appeal.

prostitution she has not admitted to, nor does her criminal history suggest that the petitioner has engaged in the regular pattern of behavior or conduct required by the Board of Immigration Appeals for a finding that an individual has "engaged" in prostitution and is inadmissible under section 212(a)(2)(D)(i) of the Act. *See Matter of T*, 6 I&N Dec. 474 (BIA 1955); and *Matter of R*, 2 I&N Dec. 50 (BIA 1944). As such, the director erred in finding the petitioner inadmissible under section 212(a)(2)(D)(i) of the Act. The record is also insufficient to support the director's determination that the petitioner is inadmissible under section 212(a)(9)(B)(i)(I) of the Act.² However, the petitioner remains inadmissible under section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), for being present in the United States without admission or parole and she does not contest this inadmissibility on appeal.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Even if the petitioner had met the statutory eligibility requirements for U nonimmigrant classification, she is inadmissible under section 212(a)(6)(A)(i) of the Act and her Forms I-192 have been denied. 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).

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

² The petitioner claims that she entered the United States without inspection, admission or parole in [REDACTED] but the present record contains insufficient evidence of any subsequent entries and departures from the United States.