



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

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

In Re: 20274545

Date: FEB. 10, 2022

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification under sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Vermont Service Center (Director) denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that he did not establish his admissibility, as required. The Director concurrently denied the Petitioner’s Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), as a matter of discretion. The Petitioner filed an appeal of the Director’s decision denying his U petition with our office, the Administrative Appeals Office (AAO). On appeal, the Petitioner submits a brief, additional evidence, and previously submitted evidence. We review the questions in this matter *de novo*. *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we conclude that a remand is warranted in this case.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) determines whether a petitioner is inadmissible – and, if so, on what grounds – when adjudicating a U petition, and has the authority to waive certain grounds of inadmissibility as a matter of discretion. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14). A petitioner bears the burden of establishing that he is admissible to the United States or that any applicable ground of inadmissibility has been waived. 8 C.F.R. § 214.1(a)(3)(i). To meet this burden, a petitioner must file a waiver application in conjunction with the U petition, requesting waiver of any grounds of inadmissibility. 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv). The denial of a waiver application is not appealable. 8 C.F.R. § 212.17(b)(3). Although we do not have jurisdiction to review the Director’s discretionary denial of the waiver application, we may consider in our review of the U petition denial whether the Director’s underlying determination of inadmissibility was correct.

II. ANALYSIS

In denying the U petition, the Director concluded that the Petitioner was inadmissible based upon the underlying denial of his waiver application. The Director noted that the Petitioner was subject to two grounds of inadmissibility, the first under section 212(a)(6)(A)(i) of the Act as a non-citizen who entered the United States without inspection or admission, and the second ground as a non-citizen who

was convicted of and/or committed a Crime Involving Moral Turpitude (CIMT) under section 212(a)(2)(A)(i)(I) of the Act.

Our review of the record shows that in [] 2010, the Petitioner was charged with two counts of battery and one count of force with a deadly weapon, under California Penal Code (PC) sections 242 and 245(a)(1), respectively. In [] 2011, he pled guilty to only one count of misdemeanor battery, under PC 242, in [] Superior Court. The police report indicates that the Petitioner hit a man and the man's wife with a broomstick causing bruising to both people. The Petitioner submitted affidavits indicating that he was the one attacked and the broomstick was used against him. When convicted, the Petitioner was sentenced to 2 days imprisonment and 24 months of probation. While punishment for crimes committed under PC 242 are prescribed by PC 243, under PC 19, all misdemeanor offenses of are punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both.

On appeal, counsel argues that his conviction under PC 242 is not a CIMT. Counsel further asserts that even if the conviction is a CIMT, it falls within a petty offense exception. We agree with the Petitioner that his conviction falls under the petty offense exception and the record supports his assertions.

As stated above, the record reflects that the Petitioner was convicted of one count of misdemeanor battery, in violation of CPC 242. Whether the conduct proscribed by section 242 involves moral turpitude need not be reached in this decision, as the conviction meets the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act. To qualify for the petty offense exception, 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 he was convicted of such crime, he must not have been sentenced to a term of imprisonment in excess of six months. The maximum possible term of imprisonment for a misdemeanor violation in California does not exceed one year and the Petitioner was sentenced to less than six months in jail. *See* Cal. Penal Code § 19. Therefore, the Petitioner's conviction meets 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 does not apply to him. We therefore withdraw the Director's finding that the Petitioner is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for being convicted of a crime involving moral turpitude.

Since the withdrawal of this ground of inadmissibility may impact the Director's discretionary determination, and because the Petitioner has also submitted new evidence on appeal relevant to his eligibility as a matter of discretion, we will remand this matter to the Director for further consideration of the U petition and underlying waiver application, including whether the Petitioner's inadmissibility under section 212(a)(6)(A)(i) of the Act may be waived in the Director's discretion, whether the Petitioner may be subject to any other grounds of inadmissibility, and whether the remaining eligibility requirements for U nonimmigrant classification have been met.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.