



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

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

In Re: 20152679

Date: FEB. 11, 2022

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity at 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 Vermont Service Center Director denied the Petitioner’s Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that he did not establish his admissibility, as required. In a separate decision issued on the same day, the Director also denied the Petitioner’s corresponding Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), finding that a favorable exercise of discretion was not warranted. The denial of the Petitioner’s U petition is now before us on appeal. A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

**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 they are 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 who is not admissible 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 2004, the Petitioner was convicted of driving under the influence and an associated traffic infraction. His only other arrest or conviction reflected in the record is a 2015 arrest for an aggravated assault in Utah. According to the police report, the Petitioner was consuming alcohol and struck his cousin on the head and in the hand with a glass beer bottle. This resulted in injuries to his cousin consisting of a cut on his head and bruises on his right hand. The police report reflects that the Petitioner was initially remorseful to his cousin, but subsequently changed his mind and decided he was not going to pay for his cousin's medical bills, which cause his cousin to file charges against the Petitioner. The incident was described in the police report as an aggravated assault on a family member with a weapon.

The Petitioner provided printouts from the court reflecting that his felony assault charge was amended to a class A misdemeanor to which he pled guilty in [REDACTED] 2016. The record further reflects that the Petitioner petitioned the court to amend the charge from a class A misdemeanor to a class B misdemeanor offense in [REDACTED] 2015. The Director issued a request for evidence (RFE) associated with the waiver application indicating the Petitioner was inadmissible under the following provisions of the Act:

- Section 212(a)(6)(A)(i) for being present in the United States without being admitted or paroled; and
- Section 212(a)(2)(A)(i)(I) for conviction or commission of a crime involving moral turpitude (CIMT).

Although the Director did not specifically state that the referenced CIMT was the Petitioner's arrest and alleged conviction for aggravated assault, the assault is the only criminal activity within the RFE to which we can infer the CIMT ground that the Director applied to the case. However, as we noted above, even though the Petitioner was arrested for an aggravated assault, the court amended that charge to an assault without any aggravating factors. In denying the U petition, the Director concluded that the Petitioner was inadmissible based upon the underlying denial of his waiver application. The Director did not explain how the Petitioner's conviction for assault constitutes a CIMT, but they did note that alcohol was involved in both his 2004 and 2016 arrests and stated that "it appears that a pattern of irresponsible alcohol consumption has developed." The Director relied on that pattern of conduct, and the Petitioner's failure to demonstrate rehabilitation to deny the waiver application on a discretionary basis because his favorable factors did not outweigh the adverse ones.

On appeal, the Petitioner claims the Director erred in determining—within the waiver application—that he was convicted of an aggravated assault, and as a result that he was convicted of a CIMT. Following that reasoning, the appeal brief explains that the Director erred in denying the U petition because of the error committed within the waiver application denial. As we explained above, the record does not support the application of section 212(a)(2)(A)(i)(I) of the Act to the Petitioner's case. As a result, we conclude that the Petitioner is not inadmissible for a CIMT conviction based on the arrests and convictions described in this decision.

Despite the fact that we do not consider the 2016 offense to be a CIMT, the abatement of that characterization does not appear that it would result in a different decision on the waiver application, as the Director exercises discretion on that filing. Although we do not possess the authority to analyze

the Director's discretionary determination on the waiver application (*see* 8 C.F.R. § 212.17(b)(3)), a review of that decision reveals that they did not place considerable weight on the 2016 offense being a CIMT, and instead they acknowledged the reduction of the offense to a misdemeanor and focused on the Petitioner's behavior. Consequently, it would serve no purpose to remand the matter to the Director for them to expressly acknowledge that the 2016 offense was not a CIMT, but to still decide that the waiver application should remain denied on discretionary grounds.

Our appellate review in this case is limited to whether the Petitioner has demonstrated that he is admissible to the United States. We conclude that he has established that the inadmissibility ground under section 212(a)(2)(A)(i)(I) of the Act does not apply to him as described in the waiver application denial. Nonetheless, the removal of that ground of inadmissibility does not automatically result in the Petitioner demonstrating that his waiver application warrants a favorable exercise of discretion. Additionally, other inadmissibility grounds remain applicable to the Petitioner's case. As a result, the Petitioner has not overcome the Director's decision, nor has he demonstrated that the Director erred in denying the waiver application.

**ORDER:** The appeal is dismissed.