



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 19902478

Date: FEB. 16, 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 revoked the prior approval of the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the approval was in error. The matter is now before us on appeal. A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (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

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, by a preponderance of the evidence, that she 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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, we may consider whether the Director’s underlying determination of inadmissibility was correct. A petitioner may submit any relevant, credible evidence for the agency to consider, however, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

USCIS may revoke an approved U petition following a notice of the intent to revoke and where, most relevantly, “[a]pproval of the petition was in error.” 8 C.F.R. § 214.14(h)(2).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner, a citizen of Mexico, filed her U petition in March 2011. In November 2011, her U petition was approved. In October 2016, the Director issued a notice of intent to revoke (NOIR) the approval as having been issued in error, pursuant to 8 C.F.R. § 214.14(h)(2)(i)(B). The NOIR recounted relevant portions of the record, which we summarize below.

According to the NOIR, the Petitioner disclosed in her U petition that in [redacted] 2010 she was arrested and charged with conspiracy to traffic cocaine and maintaining a vehicle/dwelling/place for a controlled substance. The Petitioner stated in her U petition that the charges were dismissed and included a Dismissal Order from the [redacted] Superior Court in North Carolina (dismissal order) evidencing that the charges were dismissed for the reason, “[m]ore culpable codefendant plead to Trafficking in Cocaine by Sale x 2[.]” The Petitioner responded “No” in her U petition to the question, “Have you ever illicitly trafficked in any controlled substance, or knowingly assisted, abetted or colluded in the illicit trafficking of any controlled substance?” The Petitioner filed a Form I-192, Application for Advance Permission to Enter as Non-Immigrant (waiver application), and the corresponding form instructions stated that a petitioner must “fully disclose all grounds of inadmissibility that apply” to them and an approved waiver is “only valid for the grounds of inadmissibility that were listed on the [waiver application].” Form I-192, Instructions for Application for Advance Permission to Enter as a Nonimmigrant, at 9 (July 2021 ed.), available at <https://www.uscis.gov/sites/default/files/document/forms/i-192instr.pdf>. In the Petitioner’s waiver application, she identified that she entered the United States without inspection, worked without permission, and sought a waiver for all inadmissibility factors identified through her U petition and biometrics checks. The Director approved the Petitioner’s waiver application, waiving her inadmissibility under sections 212(a)(6)(A)(i) (entered the United States without being admitted or paroled) and section 212(a)(9)(B)(i)(II) (unlawfully present in the United States for more than one year and voluntarily departed) of the Act.

The NOIR continues by stating, when the Petitioner subsequently filed her Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), she provided information on her [redacted] 2010 arrest and included the dismissal order. She answered “No” to the question, “Have you EVER illicitly trafficked in any controlled substance, or knowingly assisted, abetted, or colluded in the illicit trafficking of any controlled substance?” The NOIR notes that the Petitioner certified her answers in her U petition, waiver application, and U adjustment application as true and correct to the best of her knowledge. In adjudicating her U adjustment application, USCIS contacted the [redacted] Sheriff’s Office and [redacted] Police Department and obtained copies of the warrant and Incident/Investigation Report (police report) for Petitioner’s [redacted] 2010 arrest. A review of the police report evidenced that in [redacted] and [redacted] 2008, the [redacted] Police Department provided surveillance for the controlled purchase by two confidential informants of approximately 44.6 grams of powder cocaine and 73 grams of crack cocaine, respectively, from Petitioner’s residence. The police report stated, in relevant part, that informants met I-L-¹ at the residence in [redacted] I-L- arrived by car and his “wife who was wearing a brown dress” and “daughter” were with him. The report

¹ Initials are used to protect the identities of the individuals.

described how the informants gave I-L- money and I-L- gave \$1,000 to his “wife” to count. She counted the money, added it to the rest I-L- had counted, and put the money in her purse.

According to the Director’s analysis in the NOIR, the Petitioner was described as present when confidential informants working with the [] Police Department purchased cocaine from I-L- and she counted money for him. The Director stated the dismissal of Petitioner’s charges were not on evidentiary grounds but due to a codefendant pleading guilty. The Director further stated that I-L- “pled guilty to two counts of Cocaine Trafficking by Sale” and the police report demonstrated that Petitioner aided and assisted I-L- in the sale of controlled substances. The Director then explained that the Petitioner did not disclose in her U petition or U adjustment application that she aided and assisted the illicit trafficking of controlled substances. The Director concluded that at the time her U petition was filed, the Petitioner was inadmissible under sections 212(a)(2)(C)(i) (aiding and assisting in the illicit trafficking of controlled substances) and section 212(a)(6)(C)(i) (attempting to obtain an immigration benefit by fraud or willful misrepresentation) of the Act. The Director stated that the Petitioner did not seek a waiver of these inadmissibility grounds and that the approved waiver application was only valid for the grounds of inadmissibility that were listed on it.

The Petitioner responded to the NOIR and included, among other documents, an affidavit stating she has never trafficked or sold drugs in her lifetime and did not know that I-L- was selling drugs. She explained she became estranged from I-L- in 2004 but remained with him because they had three children together. She stated she slept on a sofa in the living room. She further stated that on the date of the crime in [] 2008, she was not home but was “most certainly out working” cleaning homes, which she did five days per week. She said I-L- would go out often and kept company with lots of different men and women and that one of these other women was with him during the sale of drugs in []. The Director determined that the submitted evidence did not overcome the noted grounds for revocation, explaining that even though the Petitioner stated she was not present during the drug sales, the police report states that she, his wife, was present during the controlled drug purchase and she did not provide any documentation by a certifying official or other law enforcement personnel to support her claims. The Director therefore revoked the U petition’s approval stating that because the Petitioner is inadmissible under sections 212(a)(2)(C)(i) and 212(a)(6)(C)(i) of the Act, and she did not disclose these grounds of inadmissibility on her U petition and related waiver application, it was approved in error. The Director concurrently revoked the Petitioner’s waiver application based on the revocation of her U petition.

B. Admissibility Not Established

The Petitioner asserts on appeal that the Director erred by solely relying on the police report, written two years prior to her arrest, to determine that she was inadmissible pursuant to section 212(a)(2)(C)(i) of the Act when she provided evidence that the court dismissed the claims against her. The Petitioner further asserts that she was never married to I-L- and was not the “wife who was wearing a brown dress” present during the drug transaction. The Petitioner included a new affidavit stating that she met and began a relationship with I-L- in Mexico in 1988. She says she and their children followed him to the United States in 1995. She then states that their relationship became distant, that they did not sleep in the same room, and that she stayed with him because of their children and because she did not think she could afford a place of her own. According to the Petitioner, I-L- began drinking alcohol, became physically and verbally abusive, went to bars and clubs most days, and she suspected he was

having affairs with other women. She says she was never at the house during the weekdays. She also states that at some point she had two jobs but does not provide dates for when she worked two jobs. She describes leaving for work at 4:30 in the morning to clean houses and then cleaning buildings in the afternoon. She also describes being arrested and staying in jail for a few months. She says I-L- was also arrested and after remaining in jail, was deported.

The Petitioner also included an affidavit from I-L- acknowledging that he was abusive to the Petitioner and that he had several girlfriends. He said he would often give these women car rides and go for drinks, but he would not go to his house. He explains that sometime in 2008-2009 he lost his job and began using and selling drugs but did not tell his family. He says he had a girlfriend that he took to his house when his family was away on weekends. He says the informant must have seen him at his house with one of his girlfriends and her daughter but he is not sure. He does not discuss what representations he made to the informants for them to identify the woman and girl as his wife and daughter in the police report.

The Petitioner also submitted an affidavit by her oldest daughter stating, when she was about 17 years old, she suffered from an ailment of the liver that kept her home from school. According to her affidavit, she would have turned 17 years old in [] 2008. She described how her parents barely spoke to each other and slept in separate rooms. She further states she knew her mother was suspicious of her father having an affair but did not state whether she knew personally of his indiscretions or whether she ever met any of his girlfriends. She says when she was arrested, she was questioned without an attorney and signed papers but does not claim she was without representation for her criminal proceedings or that she informed law enforcement that she was not present at the crime scene. She says the charges against her and her mom were dismissed because “there was never any evidence that we were present at the scene of the crime” but does not speak to the dismissal order, which stated the reason for dismissal was that a codefendant pled guilty.

We add the following facts from the police report to further supplement the record: The [] 2008 drug transaction occurred on a weekday during work hours and I-L-’s daughter is identified as being 17 years old, which was the Petitioner’s daughter’s age in 2008. According to the police report, one of the informants spoke with the daughter for 10 minutes. During the [] 2008 transaction, the informant stated the daughter was present, and did not state that this individual was different from the daughter present in [] 2008, describing her as “[I-L-]’s 17 year old daughter” during both drug transactions. The police report further described how the daughter knew where to find a large measuring cup when I-L- asked for it and retrieved it for him. The report also describes the daughter sitting in the living room working on a computer there. The police report did not state that another woman was present with the daughter in []

Section 212(a)(2)(C)(i) of the Act states that any foreign national who the Secretary of Homeland Security knows or has reason to believe “is or has been an illicit trafficker in any controlled substance . . . or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance . . . is inadmissible.” An individual may be deemed inadmissible under section 212(a)(2)(C)(i) of the Act even where there has been no conviction, so long as there is “reason to believe” they were involved in illicit trafficking of a controlled substance. See Matter of Casillas-Topete, 25 I&N Dec. 317, 321 (BIA 2010) (explaining that “the conduct must predate . . . [the foreign national]’s admission and be demonstrably known or suspected by appropriate

officials who are delegates of the . . . [Secretary]”); *Matter of Favela*, 16 I&N Dec. 753, 756-57 (BIA 1979) (interpreting the phrase “know or have reason to believe is or has been an illicit trafficker” of drugs as “entirely distinct from the provision requiring conviction for deportability to be established”). In order for an adjudicator to have sufficient “reason to believe” that a petitioner has engaged in conduct that renders her inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by “reasonable, substantial, and probative evidence.” *Matter of Rico*, 16 I&N Dec. 181, 185 (1977); see also *Alarcon-Serrano v. INS*, 220 F.3d 1116, 1119 (9th Cir. 2000) (stating that a “reason to believe” a noncitizen has engaged in conduct that renders her inadmissible under section 212(a)(2)(C) must be supported by “reasonable, substantial, and probative evidence.”). There must be “more than a mere suspicion” that the noncitizen has engaged in drug trafficking activities. See *Garces v. U.S. Att’y Gen.*, 611 F.3d 1337, 1346 (11th Cir. 2010) (quoting U.S. Dep’t of State, 9 Foreign Affairs Manual 40.23 Notes n. 2(b)).

The record demonstrates that the Director had reason to believe section 212(a)(2)(C)(i) of the Act applied to the Petitioner. The police report described I-L-’s wife being present during the drug transaction in [redacted] 2008. The Petitioner stated she was not present during the [redacted] transaction but does not provide supporting documentation evidencing, for example, that she raised this defense to law enforcement during her criminal proceedings or that she was not at the trailer home in [redacted] 2008, when the drug transaction occurred. The Petitioner argues that the Director places too much weight on the police report, however, we note that the Director also weighed the dismissal notice and evidence provided by the Petitioner in response to the NOIR in her analysis. It is within the Director’s discretion to assign credibility and weight to the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4). While the Petitioner asserts that the police report was not reliable because it was issued two years before the arrest, she does not explain how the passing of time has diminished the police report’s reliability. Furthermore, the Petitioner’s arguments that the charges against her were dismissed does not in and of itself establish she did not aid and assist in the sale of drugs. As discussed above, a conviction is not necessary, so long as there is a “reason to believe” that the Petitioner engaged in conduct that renders her inadmissible. The Petitioner’s statements on appeal lack sufficient detail to establish that she was not present at the time of, and involved in, the crime. While she states she was not at home during weekdays because she worked two jobs, one of which started at 4:30 in the morning, she does not provide dates for when she worked and does not explain whether she returned home from work in between jobs or what time she would normally be home after work. She states because she is not I-L-’s wife, the woman described in the police report is not her. However, the informants had reason to believe she was familiar with I-L- and I-L- did not clarify in his affidavit why the informants referred to the woman as his “wife.” In addition, the Petitioner does not explain why another woman would be with her daughter in the middle of a weekday. I-L-’s affidavit stated that he did not bring women to his home except for a girlfriend on the weekend and he does not state his girlfriends were acquainted with his daughter. Furthermore, the report provided enough detail to support that the informants believed I-L-’s daughter was present, describing talking to her for 10 minutes at I-L-’s trailer home in [redacted] seeing her in [redacted] and noting she knew where a measuring cup was located and was using the computer in the home. The “daughter” described is the age of the Petitioner’s daughter and there is no indication in the report that the “daughter” at the [redacted] sale was different from the one at the [redacted] sale. While I-L- states that the young girl at the transaction in [redacted] may have been his girlfriend’s daughter, he does not explain why his girlfriend’s daughter would be at his home in [redacted] without her mother and would have such

intimate knowledge of his home. The Petitioner's submissions on appeal do not establish her admissibility by a preponderance of the evidence.

We conclude, after reviewing the record in its entirety, that there is reason to believe that the Petitioner was a knowing aider, abettor, assister, conspirator, or colluder of others in the illicit trafficking of a controlled substance. In these proceedings, the Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including that she was admissible or that all applicable grounds of inadmissibility were waived at the time of approval of her U petition and associated waiver application. Section 291 of the Act; 8 C.F.R. §§ 214.1(a)(3)(i) and 214.14(c)(4); Chawathe, 25 I&N Dec. at 375. The Petitioner has not demonstrated, by a preponderance of the evidence, that the inadmissibility ground under section 212(a)(2)(C)(i) of the Act for controlled substance trafficking did not apply to her at the time of filing of her U petition and associated waiver application. The Petitioner did not address her inadmissibility under 212(a)(6)(C)(i) of the Act on appeal, nor does she assert that either of these grounds of inadmissibility were waived.

III. CONCLUSION

The Petitioner has not overcome the basis of the Director's revocation of her U petition and established her admissibility to the United States or that all applicable grounds of inadmissibility were waived.

ORDER: The appeal is dismissed.