



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

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

In Re: 18955125

Date: FEB. 22, 2022

Motion on Administrative Appeals Office 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 Director of the Vermont Service Center denied the Petitioner’s Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that she did not establish her admissibility, as required. The Director likewise denied the Petitioner’s corresponding Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application). The Petitioner appealed the Director’s denial to the Administrative Appeals Office (AAO), and we subsequently denied the appeal. Now, the case is before us on motion to reconsider. On motion, the Petitioner submits a brief. Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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 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.

II. ANALYSIS

Both the Director and this office have laid out the facts of this case in our respective prior decisions, and we incorporate them here by reference. The record demonstrates the Petitioner had the following criminal history: an [] 1996 conviction for prostitution under Oregon Revised Statutes Annotated (ORS) section 167.007; a [] 1999 conviction for unlawful possession of firearms under ORS section 166.250; a [] 1999 conviction for prostitution under ORS section 167.007; a []

2006 plea of guilty for possession of designated controlled substances under California Health & Safety Code (CHSC) section 11350(a); an [] 2009 conviction for disorderly conduct under California Penal Code (CPC) section 647(f); a [] 2009 conviction for fighting; noise; offensive words under CPC section 415; and a [] 2010 plea of nolo contendere and conviction for unauthorized possession of a controlled substance under CHSC section 11377(a).

The Director denied the U petition concluding that the Petitioner was not admissible to the United States because her waiver application was denied. In the denial of the Petitioner's waiver application, the Director concluded that because of the Petitioner's criminal history, the Petitioner was inadmissible under the following provisions of the Act:

- Section 212(a)(1)(A)(iv), Drug Addict/Abuser
- Section 212(a)(2)(A)(i)(I), Crime Involving Moral Turpitude (CIMT)
- Section 212(a)(2)(A)(i)(II), Controlled Substance Violator
- Section 212(a)(2)(D)(i), Prostitution Within Last 10 Years

On appeal, we withdrew the portions of the Director's decisions that indicated the Petitioner was inadmissible as a drug addict or abuser and for prostitution within the last 10 years, under sections 212(a)(1)(A)(iv) and 212(a)(2)(D)(i) of the Act, respectively. We also withdrew the Director's finding that the 1999 conviction for unlawful possession of a firearm was a CIMT, under Section 212(a)(2)(A)(i)(I) of the Act. We did not, however, disturb the Director's conclusions that the Petitioner's convictions for prostitution were CIMTs that rendered her inadmissible under section 212(a)(2)(A)(i)(II) of the Act, and her 2009 conviction for disorderly conduct involving possession of a controlled substance that rendered her inadmissible as a controlled substance violator, under Section 212(a)(2)(A)(i)(II).

On motion, the Petitioner does not contest her inadmissibility as a controlled substance violator, under section 212(a)(2)(A)(i)(II) of the Act. Instead, the Petitioner states that we denied her petition solely on the ground that her prostitution convictions are CIMTs that rendered her inadmissible under section 212(a)(2)(A)(i)(II) of the Act. She goes on to argue that we misapplied the law in holding that the prostitution convictions were CIMTs.

The Petitioner argues that we misapplied *Rohit v. Holder*, 670 F.3d 1085 (9th Cir. 2012) and *Matter of W*, 4 I&N Dec. 401 (BIA 1951) in agreeing with the Director who held that the Petitioner is inadmissible because both of her convictions for prostitution, under ORS section 167.007 were CIMTs. She argues that the crime committed in *Rohit v. Holder*, a prostitution conviction under California state law, is distinguishable from her conviction under ORS section 167.007 because the California statute required scienter,¹ and ORS section 167.007 does not. *See* 670 F.3d 1085. In support of her argument, she cites to *State v. Huie* for the proposition that ORS section 167.007 does not prescribe scienter and that there is a possibility of prosecution for acts committed unintentionally. 52 Or.App. 975 (1981). However, the proposition that the Petitioner cited to in *Huie* was not a holding of the court but was the court's recitation of the defendant's argument. *Id.* at 975 The court in *Huie*

¹ "A degree of knowledge that makes a person legally responsible for the consequences of his or her act or omission; the fact of an act's having been done knowingly, esp. as a ground for civil damages or criminal punishment." *Scienter*, Black's Law Dictionary (11th ed. 2019).

goes on to rebut the defendant's argument and hold that the "knowing" mental state is implicit in the definition of Prostitution under ORS section 167.007. *See id.* at 978. The Petitioner then cites to *Olivas-Motta v. Holder*, 716 F.3d 1199 (9th Cir.2013), for the proposition that Oregon courts do not *per se* consider crimes under ORS section 167.007 as CIMTs. But *Olivas-Motta* discusses a conviction for marijuana possession in Arizona and does not mention any Oregon state law. We are not aware of any case law, and the Petitioner has not provided any case law, to suggest that Oregon courts do not consider crimes committed under ORS section 167.007 as CIMTs. The Petitioner also asserts that we erred in relying on *Matter of W*, 4 I&N Dec. 401, because the case involved Washington statutes and not Oregon statutes. Contrary to the Petitioner's assertions, we cited to *Matter of W* to explain that the Ninth Circuit Court of Appeals gave deference to *Matter of W*, when deciding *Rohit*, 670 F.3d 1085, even though *Rohit* involved a California prostitution statute and *Matter of W* involved a Washington prostitution statute, and, in *Matter of W* the Board of Immigration Appeals "held that an ordinance that criminalized a single act of prostitution dealt with a crime involving moral turpitude." 4 I&N Dec. 401. Our prior decision was implicitly stating that since Oregon is part of the Ninth Circuit's jurisdiction, if the court gave deference to *Matter of W* in a case involving a California statute, it would also give deference to it in a case involving an Oregon statute. Finally, the Petitioner cites to *State v. Grimes*, 85 Or.App. 159 (1987), for the proposition that the Oregon judiciary has labeled prostitution a form of protected free speech. The court in *Grimes*, however, states the opposite of the Petitioner's contention, and holds that ORS section 167.007 "fits within a historical exception to Article I, section 8," the portion of Oregon's constitution that guarantees freedom of speech, and is thereby not protected under Oregon free speech laws. *See* 85 Or.App. at 163. Therefore, the Petitioner has not established that our decision agreeing with the Director in holding that the Petitioner was inadmissible due to both of her convictions for prostitution, under ORS section 167.007, was based on an incorrect application of law or policy, as required by 8 C.F.R. § 103.5(a)(3).

Additionally, the Petitioner has not presented any arguments or evidence that the Director erred in finding her inadmissible to the United States as a controlled substance violator, under section 212(a)(2)(A)(i)(II) of the Act. Therefore, the Petitioner has not established that our decision agreeing with the Director's finding that the Petitioner was inadmissible due to her 2009 conviction for disorderly conduct involving possession of a controlled substance was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3).

III. CONCLUSION

The Petitioner has not established that she is admissible to the United States or that the applicable grounds of inadmissibility have been waived. Accordingly, the Petitioner has not demonstrated that we should reconsider our decision.

ORDER: The motion to reconsider is dismissed.