



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

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

In Re: 21283567

DATE: MAR. 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 denied the U petition, concluding that the Petitioner was inadmissible as a suspected controlled substance trafficker, a nonimmigrant present without admission or parole, and alien smuggling, under sections 212(a)(2)(C)(i), 212(a)(6)(A)(i), and 212(a)(6)(E)(i), respectively, and was unable to establish that a favorable exercise of discretion for her waiver request was warranted. On appeal, the Petitioner submits a brief and copies of evidence previously contained in the record. Upon de novo review, we will dismiss the appeal.

## I. LAW

When adjudicating a U petition, U.S. Citizenship and Immigration Services (USCIS) determines whether a petitioner is inadmissible, 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). U petitioners bear 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, an inadmissible U 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).

A petitioner must establish that he or she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter de novo. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

## II. ANALYSIS

The Petitioner, a native and citizen of Honduras, filed the instant U petition in April 2016, concurrently with a Form I-192, Application for Advance permission to Enter as a Nonimmigrant (waiver application), requesting a waiver of inadmissibility grounds. In November 2021, the Director denied the waiver and found that since the Petitioner was inadmissible under sections 212(a)(2)(C)(i) (suspected controlled substance trafficker), 212(a)(6)(A)(i) (nonimmigrant present without admission

or parole), and 212(a)(6)(E)(i) (alien smuggling) of the Act, a favorable exercise of discretion was not warranted. Consequently, the Director determined the Petitioner was ineligible for U nonimmigrant status as she remained inadmissible to the United States.

On appeal, the Petitioner only contests her inadmissibility as a suspected controlled substance trafficker, under section 212(a)(2)(C)(i) of the Act, leaving the inadmissibility finding that she is a nonimmigrant without admission or parole, under 212(a)(6)(A)(i), as well as being inadmissible for alien smuggling, under 212(a)(6)(E)(i), undisturbed.<sup>1</sup> Regarding her inadmissibility as a suspected controlled substance trafficker, the Petitioner was arrested in [ ] 2013 by the [ ] (North Carolina) Sheriff's Office and charged with trafficking in marijuana and possession with intent to sell or deliver marijuana. In her previous statements in the record, the Petitioner argued that her friend contacted her to receive a package, and she was unaware of the contents. The Petitioner claimed that the friend was not home, and that the Petitioner was having issues with receiving mail, so they redirected the package to the Petitioner's sister's house. When the package arrived, the Petitioner signed for the package, and shortly after, the police arrived to arrest her. The Petitioner claimed that she was unaware that the package contained 10 pounds of marijuana, and she had not opened the package to inspect the contents. She also contended that she was not convicted for any controlled substance trafficking offenses; however, these charges were dismissed on procedural grounds after the law enforcement officer was unavailable. On appeal, the Petitioner states that if the Director denied her waiver application solely because of the inadmissibility ground under 212(a)(2)(C)(i), then the Director erred.

However, contrary to the Petitioner's assertions, a petitioner may be deemed inadmissible under section 212(a)(2)(C) even where there has been no admission or conviction, so long as there is "reason to believe" that the petitioner engaged in proscribed conduct relating to trafficking in a controlled substance. *See Matter of Casillas-Topete*, 25 I&N Dec. 317, 320-21 (BIA 2010). In order for an adjudicator to have sufficient "reason to believe" that a petitioner has engaged in conduct that renders him or 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 (BIA 1977). Here, there is reasonable substantial and probative evidence against the Petitioner, including being found with 10 pounds of marijuana in her possession. *See id.* The Petitioner has not provided sufficient explanation or evidence, such as the police or arrest records, to substantiate her claims that she was unaware of the contents of the package. Therefore, there is sufficient reason to believe that she engaged in conduct that renders her inadmissible under section 212(a)(2)(C).

On appeal, the Petitioner argues that the charges being dismissed due to the law enforcement officer being unavailable indicated a disinterest in prosecuting her for the charges she faced. However, the charges being dismissed on procedural grounds does not constitute a finding that the underlying conduct did not occur, or a finding that the Petitioner was not involved with the activity that led to her arrest. The Petitioner further contends that, following her arrest, she was placed in Immigration and Customs Enforcement (ICE) custody, placed in removal proceedings, and as the Form I-862, Notice to Appear (NTA), only charged her under 212(a)(6)(A)(i), that ICE did not consider her inadmissible

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<sup>1</sup> The Petitioner's only acknowledgement in her brief on appeal is to state that the inadmissibilities for being present without admission or parole and alien smuggling are "commonly evaluated and waived in U Visa cases." She does not contest that she is inadmissible on these grounds.

under 212(a)(2)(C). The issuance of the NTA by ICE and the adjudication of a U nonimmigrant petition are different proceedings with different purposes. The ICE attorney must establish alienage and deportability in removal proceedings. The lack of inadmissibility charges in removal proceedings does not preclude USCIS from making its own determination that the Petitioner is inadmissible under 212(a)(2)(C) of the Act. Further, the Director did not deny the waiver application solely on the Petitioner's inadmissibility as a suspected controlled substance trafficker. Instead, the Director found that the Petitioner was inadmissible as a suspected controlled substance trafficker as well as a nonimmigrant present without admission or parole and for alien smuggling.

Our review on appeal is limited to whether the Petitioner is in fact inadmissible to the United States, as determined by the Director, and consequently ineligible for U nonimmigrant status. We do not have the authority to review the Director's discretionary determination or to adjudicate a waiver application. 8 C.F.R. § 212.17(b)(3). As the Petitioner does not contest her grounds of inadmissibility as a nonimmigrant present without admission or parole or for alien smuggling, under 212(a)(6)(A)(i) and 212(a)(6)(E)(i) of the Act, and did not overcome her burden of demonstrating that she is not inadmissible as a suspected controlled substance trafficker, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.