



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

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

In Re: 27437275

Date: August 31, 2023

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner, a citizen of Mexico, seeks U 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 found the Petitioner inadmissible, and denied his corresponding Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), as a matter of discretion. The Director then denied the Petitioner's Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that he did not establish his admissibility. The denial of the Petitioner's U petition is now before us on appeal. 8 C.F.R. § 103.3. The Administrative Appeals Office reviews 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 will dismiss the appeal.

To establish eligibility for U nonimmigrant classification, petitioners must establish 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 the 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). U.S. Citizenship and Immigration Services 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). The denial of a waiver 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.

The Director determined that the Petitioner was inadmissible under the following sections of the Act:

- 212(a)(6)(A)(i) - Alien present without admission or parole
- 212(a)(2)(A)(i)(I) - Conviction or commission of a crime involving moral turpitude
- 212(a)(1)(A)(iii)(I) - Physical or mental disorder associated with harmful behavior
- 212(a)(1)(A)(iv) - Drug abuser or addict

The Director further determined that the Petitioner did not warrant a waiver of the applicable inadmissibility grounds as a matter of discretion.

On appeal, the Petitioner concedes inadmissibility based upon section 212(a)(6)(A)(i) of the Act, as an alien present without admission or parole. As stated above, our review on appeal is limited to whether the Petitioner is in fact inadmissible to the United States and, if so, on what grounds. We do not have the authority to review the Director's discretionary determination on his waiver application. As the Petitioner does not contest inadmissibility based upon section 212(a)(6)(A)(i) of the Act, has not presented any arguments or evidence that the Director erred in finding him inadmissible to the United States on that ground, and his admissibility has not been waived, he has not overcome the grounds for the Director's denial.¹

The Petitioner has not established that he is admissible to the United States or that the applicable grounds of inadmissibility have been waived. Accordingly, he is ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.

¹ The Director found the Petitioner inadmissible based on two health-related grounds, INA section 212(a)(1)(A)(iii)(I), physical or mental disorder associated with harmful behavior, and INA section 212(a)(1)(A)(iv), drug abuser or addict. However, only medical examiners, such as panel physicians, civil surgeons, or other physicians designated by the Director of Health and Human Services may make health-related determinations regarding an individual having a physical or mental disorder associated with harmful behavior and regarding whether an individual is a drug abuser or addict. 42 C.F.R. § 34; see also USCIS Policy Manual at chapters 7 and 8 (where a medical exam is required to determine admissibility, it must be performed by a physician designated to perform the examination). The record reflects that the civil surgeon completed a Form I-693, Report of Medical Examination and Vaccination Record, finding the Petitioner did not currently have a physical or mental disorder associated with harmful behavior and not finding the Petitioner to be a drug abuser or addict. Accordingly, we withdraw those two grounds of inadmissibility.

In addition, on appeal, the Petitioner contests his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for conviction or commission of a crime involving moral turpitude. The Petitioner presents evidence that he was not convicted of operating a vehicle while intoxicated, a level 6 felony, as cited by the Director, constituting a crime involving moral turpitude. Rather, the Petitioner has demonstrated that the felony charge was dismissed. The Petitioner pled guilty to reckless driving under Indiana Code § 9-21-8-52(a)(1)(A), a class C misdemeanor, a week before the Director entered their decision.

Indiana Code § 9-21-8-52(a)(1)(A) does not entail a conscious disregard of a substantial and unjustifiable risk posed by one's conduct as an element of the crime, therefore conviction under this statute is not a crime involving moral turpitude. In other words, a prosecutor does not have to prove any mental state of the perpetrator under this statute, see *Banks v. State*, 953 N.E.2d 679 (Ind. Ct. App. 2011) (a charge of reckless driving entails the State establishing the driver "(1) drove at 'such an unreasonably high rate of speed ... under the circumstances,' (2) endangering the safety or the property of others or (3) blocking the proper flow of traffic. See I.C. § 9-21-8-52(a)(1)."). In contrast, "recklessness", which is not an element in the Applicant's conviction, would entail a prosecutor proving a conscious disregard of a substantial and unjustifiable risk posed by one's conduct. *Matter of Medina*, 15 I&N Dec. 611, 613 (BIA 1976), *aff'd sub nom. Medina-Luna v. INS*, 547 F.2d 1171 (7th Cir. 1977).

Accordingly, we withdraw the health-related and criminal-related inadmissibilities under section 212(a)(1)(A)(iii)(I) of the Act (physical or mental disorder associated with harmful behavior), INA section 212(a)(1)(A)(iv) (drug abuser or addict), and section 212(a)(2)(A)(i)(I) of the Act (conviction or commission of a crime involving moral turpitude).