



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

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

In Re: 24133523

Date: JAN. 5, 2023

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 Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish his admissibility, as required. The Director concurrently denied the Petitioner’s Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), as a matter of discretion. The Petitioner filed a motion to reopen and reconsider with the Vermont Service Center. The Director reopened the matter and ultimately reaffirmed the prior decision. The Petitioner then filed this appeal of the Director’s decision denying his U petition with our office.¹

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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.

When adjudicating a U petition, U.S. Citizenship and Immigration Services 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). 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.

In denying the U petition, the Director concluded that the Petitioner had not established his inadmissibility as required. The Petitioner was found inadmissible based on the following sections of the Act:

¹ The Petitioner filed a separate appeal contesting the denial of his waiver application. As we do not have jurisdiction to consider appeals of waiver applications, this appeal was previously rejected.

- 1) 212(a)(6)(A)(i) (any noncitizen present in the United States without being admitted or paroled or who has arrived at a time or place not designated by the Attorney General is inadmissible)
- 2) 212(a)(9)(A)(ii) (any noncitizen ordered removed who departed while such order of removal was outstanding, and who seeks admission within 10 years of departure, or within 20 years for a subsequent removal is inadmissible)
- 3) 212(a)(9)(B)(i)(I) (any noncitizen unlawfully present more than 180 days but less than one year who voluntarily departs the United States and seeks admission within three years of departure or removal is inadmissible)
- 4) 212(a)(9)(B)(i)(ii) (any noncitizen unlawfully present more than one year who voluntarily departs the United States and seeks admission within ten years of departure or removal is inadmissible)
- 5) 212(a)(9)(C)(i)(I) (any noncitizen who has been unlawfully present for an aggregate period of more than one year and who enters or attempts to reenter the United States without admission is inadmissible)
- 6) 212(a)(9)(C)(i)(II) (any noncitizen who has been ordered removed and who enters or attempts to reenter the United States without admission is inadmissible).

On appeal, the Petitioner does not contest the Director's determination that he is inadmissible under these sections of the Act. Instead, the Petitioner contends that the Director erred in denying the U petition and waiver application because an improper standard was used in reaching the negative discretionary determination and denying the waiver application. The Petitioner highlights various factors tending to show that the Director should have granted the waiver in the national and public interest. The Petitioner argues that, due to these factors, he merits a favorable exercise of discretion notwithstanding the grounds of inadmissibility. The Petitioner asks us to reverse the prior denials or, alternatively, to remand to the Director for further consideration.

As noted above, 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 of whether to grant a waiver application. 8 C.F.R. § 212.17(b)(3). The Petitioner does not contest the stated grounds of inadmissibility due to the above-listed sections of the Act. In addition, the Petitioner does not otherwise assert that the Director erred in finding him inadmissible to the United States on these grounds. Therefore, we must dismiss the appeal.

ORDER: The appeal is dismissed.