



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

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

In Re: 24133730

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 her 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 an appeal of the Director’s decision denying her 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.

¹ The Petitioner filed a separate appeal contesting the denial of her waiver application. As we do not have jurisdiction to consider appeals of waiver applications, this appeal was previously rejected. We note that the Petitioner’s brief indicates it is in support of the U petition appeal but is also a “Supplemental Brief in Support of Motion to Reopen or Motion to Reconsider” the waiver application. A footnote in the brief requests that we treat the filing as a motion to reopen and a motion to reconsider the prior decision. Motions to reopen or reconsider must be directed to the office that made the initial decision. As the Vermont Service Center issued the initial decisions on the Petitioner’s U petition and waiver application, any motion to reopen or reconsider the decisions must be directed to that office.

In denying the U petition, the Director concluded that the Petitioner was inadmissible based upon the underlying denial of her waiver application. The Director found that the Petitioner was inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole) and 212(a)(6)(C)(i) (fraud or willful misrepresentation) of the Act. The decision further noted that the Petitioner could be inadmissible under section 212(a)(6)(E)(i) (alien smuggling) of the Act.

On appeal, the Petitioner contests the finding of inadmissibility for fraud and willful misrepresentation. The Petitioner asserts that she did not willfully misrepresent her marital status or her family's involvement with the Guatemalan military. She submits additional record evidence to support her assertion that she was legally single until she entered into her current marriage. She also clarifies the military history of her family members and argues that she did not willfully represent this family history. The Petitioner also addresses the possible ground of inadmissibility for alien smuggling, arguing that she had no involvement in making arrangements for her daughter to enter the United States without admission.

The Petitioner does not contest the Director's determination that she is inadmissible due to her presence in the United States without having been admitted or paroled. The Petitioner highlights various factors tending to show that the Director should have granted the waiver application in the national and public interest. The Petitioner argues that, due to these factors, she 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 ground of inadmissibility for being present without admission or parole. The Petitioner does not otherwise assert that the Director erred in finding her inadmissible to the United States on this ground. Therefore, we must dismiss the appeal.

ORDER: The appeal is dismissed.