



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

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

In Re: 26739788

Date: JUN. 2, 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. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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.

U.S. Citizenship and Immigration Services determines whether a petitioner is inadmissible – and if so, on what grounds – when adjudicating a U petition, 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 was inadmissible based upon the underlying denial of her waiver application. The Director noted that the Petitioner was inadmissible under sections 212(a)(6)(A)(i) (present in the United States without admission or parole) and 212(a)(2)(A)(i)(I) (conviction or commission of a crime involving moral turpitude) of the Act. On appeal, the Petitioner does not contest her inadmissibility under these sections or otherwise argue that

the Director erred in finding her inadmissible to the United States. Instead, the Petitioner contends that the Director erred in denying the U petition and waiver application because due consideration was not given to her victimization as a child or her tumultuous upbringing; she notes that the underlying crime giving rise to her U petition resulted in a serious drug addiction from a young age and ultimately caused her criminal conduct. She also contends that her efforts toward rehabilitation and her sobriety were affirmed by reputable sources such as professors, but she argues that this rehabilitation was not adequately weighed by the Director. Finally, she highlights her lengthy residence in the United States, her lack of familiarity with Mexico, and the positive contributions she has made to her family and community since her release from incarceration. 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.¹

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 presence without admission or for a conviction or commission of a crime involving moral turpitude, under sections 212(a)(6)(A)(i) and 212(a)(2)(A)(i)(I) of the Act. In addition, the Petitioner does not otherwise assert that the Director erred in finding her inadmissible to the United States on these grounds. Therefore, we must dismiss the appeal.

ORDER: The appeal is dismissed.

¹ The Petitioner also argues that her waiver petition should be considered pending, as a notice of transfer was sent after she had received the denial. As noted above, we lack jurisdiction over the waiver application and cannot address the propriety or finality of that decision.