



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

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

In Re: 21799141

Date: APR. 19, 2022

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity at 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 Petitioner’s Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that he did not establish his admissibility, as required. The Director likewise denied the Petitioner’s corresponding Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), finding that the Petitioner was inadmissible and that a favorable exercise of discretion was not warranted. The denial of the Petitioner’s U petition is now before us on appeal.¹ 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.

I. LAW

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).

A petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including that they are admissible to the United States or that any applicable ground of inadmissibility has been waived. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.1(a)(3)(i); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 8 C.F.R. § 214.1(a)(3)(i). To meet this burden, a 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, we may consider whether the Director’s underlying determination of inadmissibility was correct.

¹ The Petitioner’s attorney indicated on the Form I-290B, Notice of Appeal, that a brief and/or additional evidence would be filed within 30 days, but neither was received.

II. ANALYSIS

The record reflects that the Petitioner entered the United States without inspection, admission, or parole with his mother on or around 1992, when he was 16 years old. He returned to Mexico on or around 1996, when he was 20 years old. He reentered the United States in 2001 without inspection, admission, or parole and has remained in the country since that time. Additionally, the record reflects that the Petitioner was arrested in [redacted] 2002 in [redacted] California, for lewd conduct, sexual battery, and battery. The Petitioner pled *nolo contendere* to battery. The charges for lewd conduct and sexual battery were dismissed. The Petitioner was sentenced to 37 days in jail (with 25 days credited) and placed on summary probation for 36 months. He was also ordered to attend 52 sessions of Sexual Compulsive Anonymous/Alcoholics Anonymous meetings and pay \$100 in restitution. According to the Petitioner, in [redacted] 2015, he was cited for having an open container of alcohol. A check of his personal information revealed that he had an outstanding bench warrant for violating his probation namely, for failing to attend the Sexual Compulsion Anonymous meetings and a court hearing in [redacted] 2002. He was subsequently arrested and his probation was reinstated with an additional 90 days in jail (with one day of time credited).

The Director denied the U petition in September 2021, concluding that the Petitioner did not establish his admissibility. The Director concurrently denied the waiver application, finding that the Petitioner was inadmissible under section 212(a)(6)(A)(i) (for being present in the United States without being admitted or paroled) of the Act, and that a favorable exercise of discretion was not warranted.²

On appeal, the Petitioner asserts, through counsel, that “the Director bas[ed] the denial due to [his] arrest, but the arrest (or even conviction) does not render [him] inadmissible.” We note, however, that the Director did not find the Petitioner inadmissible due to his criminal history. Rather, she concluded that the Petitioner did not warrant a favorable exercise of discretion due to said criminal history.³ In this case, the Petitioner does not contest the sole ground of inadmissibility determined to be applicable by the Director or otherwise argue that the Director erred in finding him inadmissible to the United States. 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. As the Petitioner does not contest the stated ground of inadmissibility and has not presented any arguments or evidence that the Director erred in finding him inadmissible to the United States, we must dismiss the appeal.

III. CONCLUSION

The Petitioner has not established that he is admissible to the United States or that the applicable grounds

² We note that the record indicates that the Petitioner is also inadmissible under section 212(a)(9)(B)(i)(II) (one year or more of unlawful presence) and section 212(a)(9)(C)(i)(I) (reentering the United States without admission or parole after accruing one year or more of unlawful presence) of the Act.

³ Specifically, the Director noted that the Petitioner’s 2001 arrest for sexual battery and a subsequent conviction for battery resulting in 36 months of summary probation indicated that he may be a threat to public safety. Additionally, the Director highlighted that the Petitioner violated the terms of his probation and was later cited for an open container of alcohol, evidencing a disregard for the law and limited rehabilitation. Lastly, the Director noted that the Petitioner failed to submit an arrest report regarding his 2001 arrest for sexual battery, which made it difficult for USCIS to address the threat he posed and continues to pose to public safety.

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.