



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

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

In Re: 19241391

Date: MAR. 16, 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 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). The matter is now before us on appeal. On appeal, the Petitioner submits a brief and asserts her eligibility for U nonimmigrant status. We review the questions in this matter *de novo*. See *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 (USCIS) 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 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 where the record establishes the petitioner’s inadmissibility, 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.

II. ANALYSIS

The Petitioner acknowledged that she entered the United States without inspection in 1990 and was present in the United States without being inspected or admitted. The Petitioner also submitted evidence indicating that she was arrested several times in California between 1995 and 2007, including for assault with a deadly weapon and with force likely to produce great bodily injury, burglary, giving false information to a police officer, petty theft, and attempting to prevent/dissuade a witness, and

willful cruelty to a child. The record reflects that the Petitioner was convicted of the offense involving willful cruelty to a child but does not establish the final dispositions of the remaining arrests.

In denying the U petition, the Director concluded that the Petitioner was inadmissible, and the applicable grounds of inadmissibility had not been waived as her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (waiver application) had also been denied as a matter of discretion. Specifically, the Director determined that the Petitioner was inadmissible under sections 212(a)(2)(A)(i)(I) (crime involving moral turpitude (CIMT)) and 212(a)(6)(A)(i) (present in the United States without being admitted or paroled) of the Act.

On appeal, the Petitioner contests the Director's finding that she was convicted of a CIMT. In support of this argument, she asserts that her 2007 arrest and conviction for willful cruelty to a child under section 273A(b) of the California Penal Code (CPC) only resulted in a misdemeanor conviction and therefore her conviction was not for an offense constituting a CIMT. The Petitioner on appeal further states that even if she is inadmissible based on her conviction for theft under CPC section 484¹ following her 1996 arrest, the "evidence in the record" shows that her inadmissibility is waivable under the petty offense exception under section 212(a)(2)(a)(ii)(II) of the Act.²

The Petitioner's assertions are not sufficient to overcome the Director's basis for denial of her U petition. As stated, a petitioner bears 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). Here, the Petitioner has not met her burden. Although the Director did not specifically identify which of the Petitioner's offenses were found to be CIMTs, the record reflects that the Petitioner was arrested on multiple occasions for offenses that may constitute CIMTs if they resulted in convictions, including theft and felony assault with a deadly weapon or with force likely to produce great bodily injury.³ The Petitioner's statements addressed her criminal history; however, she has not submitted the requested copies of the court or other documents demonstrating the statutes and final dispositions for all of her arrests and convictions. Consequently, even assuming *arguendo* that some of the Petitioner's convictions are not for CIMTs, as she has not established the criminal offenses and statutes under which she was convicted for all of her arrests, including her arrests for assault with a deadly weapon and force likely to produce great bodily injury, we cannot determine whether the Petitioner has been convicted of a CIMT that renders her inadmissible. She therefore has not met her burden to demonstrate that she is not inadmissible. Furthermore, the Petitioner does not contest, and the record does not disclose any error in, the Director's finding of her inadmissibility on the other ground identified, specifically under section 212(a)(6)(A)(i) of the Act for being present in the United States without being admitted or paroled.

¹ In relation to this offense, the Petitioner mistakenly cites CPC section 487(a), which relates to theft of animals and is not the statute for petty theft, the offense with which she was charged..

² Under the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act, a noncitizen who committed only one crime is not inadmissible under section 212(a)(2)(A)(i)(I) for a CIMT, if the maximum penalty possible for the crime was less than one year and the noncitizen was sentenced to a term of imprisonment for less than 6 months (regardless of how long the noncitizen was actually imprisoned). As discussed in this decision, because we are unable to ascertain the Petitioner's final convictions stemming from her various arrests, including several involving CIMT crimes, we cannot assess whether the Petitioner's convictions were for offenses constituting a CIMT and if the petty offense exception applies.

³ Assault with a deadly weapon or force likely to produce great bodily injury under California law is categorically a CIMT. *Matter of Aguilar-Mendez*, 28 I&N Dec. 262 (BIA 2021); *Matter of Wu*, 27 I&N Dec. 8 (BIA 2017).

Although the Petitioner filed the requisite waiver application to waive her inadmissibility, the Director denied the application. We acknowledge the Petitioner's assertions on appeal that her waiver application merits a favorable exercise of discretion. However, as stated above, our review on appeal is limited to whether the Petitioner is in fact inadmissible to the United States, and we do not have the authority to review the Director's discretionary denial of the waiver application. 8 C.F.R. § 212.17(b)(3).

III. CONCLUSION

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

ORDER: The appeal is dismissed.