



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

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

In Re: 22044009

Date: MAY 4, 2022

Motion on Administrative Appeals Office 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), and we dismissed the Petitioner’s subsequent appeal. The matter is now before us on a motion to reopen and motion to reconsider. The Petitioner submits a brief disagreeing with our dismissal of his appeal. Upon review, we will dismiss the motions.

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 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, a petitioner who is inadmissible 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 whether the Director’s underlying determination of inadmissibility was correct.

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The Petitioner, a native and citizen of Mexico, acknowledges reentering the United States without inspection, authorization, or parole in July 2010 after being voluntarily returned in 2009. The record further reflects that the Petitioner was arrested on several occasions, resulting in several California misdemeanor convictions and a felony conviction for Import/Sale/Distribute Controlled Substance into State under section 11379(a) of the California Health and Safety Code.

In our dismissal of the Petitioner's appeal, incorporated here by reference, we noted that the Director found the Petitioner inadmissible under sections 212(a)(2)(A)(i)(I) (crime involving moral turpitude), 212(a)(2)(A)(i)(II) (violation of any law relating to a controlled substance), 212(a)(6)(A)(i) (present in the United States without being admitted or paroled), 212(a)(9)(A)(ii) (previously removed and seeking admission as other than an arriving alien), 212(a)(9)(B)(i)(II) (unlawfully present one year or more and seeking admission within 10 years of departure or removal), 212(a)(9)(C)(i)(II) (previously ordered removed and entered without being admitted) of the Act, and his waiver application seeking to waive the applicable grounds of inadmissibility had been denied as a matter of discretion.

In our decision on his appeal, we noted that the Petitioner did not contest the grounds of inadmissibility, instead, he asserted, through counsel, that he merited approval of his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (waiver application). Further, the dismissal explained that 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 did not contest the stated grounds of inadmissibility and did not present any arguments or evidence that the Director erred in finding him inadmissible to the United States, we dismissed the appeal.

On motion, the Petitioner submits a document titled "Reasons for Motion to Reconsider," where he again does not contest the grounds of inadmissibility. Instead, he argues that he simultaneously filed appeals of the denials for both his U nonimmigrant petition and waiver application.¹ The Petitioner states that our prior decision erred in not allowing an appeal of his waiver application to be adjudicated prior to our adjudication of his appeal of his U nonimmigrant petition. The Petitioner submits two copies of Form I-797C, Notice of Action, both of which reflect the receipt number that was assigned to the appeal of his U nonimmigrant petition. A review of USCIS systems and the Petitioner's file reflects that he only filed the appeal of his U nonimmigrant petition. Further, even if the Petitioner had filed an appeal *or* motion of the denial of his waiver application, there is no relevant authority requiring us to hold the U petition in abeyance pending adjudication of the Petitioner's motion on a waiver application.

¹ We note that a denial of Form I-192 may not be appealed. *See* 8 C.F.R. § 212.17(b)(3). If the Petitioner had filed the Form I-290B, Notice of Appeal or Motion, as an appeal of the denial of his waiver application, this office would have rejected the appeal, as we do not have jurisdiction to review a denial of that application.

III. CONCLUSION

The Petitioner did not state new facts supported by affidavits or other documentary evidence and has not established that our prior decision finding that he is admissible to the United States or that the applicable grounds of inadmissibility have been waived was made in error. Accordingly, his motion to reopen and motion to reconsider our prior adverse decision are dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.