



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

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

In Re: 24342910

Date: JAN. 11, 2023

Motion on Administrative Appeals Office 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 Nebraska Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish his 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 his U petition with our office. The appeal was summarily dismissed due to the Petitioner’s failure to specify an erroneous conclusion of law or statement of fact in the unfavorable decision. The Petitioner has filed a motion to reopen and reconsider our decision. Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a “new fact” to have been previously unavailable or undiscoverable. Instead, “new facts” are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought. The Petitioner bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

II. ANALYSIS

Although the Petitioner has submitted new facts and legal arguments sufficient to meet the motion to reopen and reconsider requirements, the evidence in the record is ultimately insufficient to establish his eligibility.

A. Grounds for Dismissal of Appeal Overcome on Motion

The Petitioner's Form I-290B appeal indicated that a brief or additional evidence would be filed within 30 days. The form did not otherwise specify any erroneous conclusion of law or statement of fact in the Director's denial. As we did not receive a brief or additional evidence, we summarily dismissed the Petitioner's appeal. On motion, the Petitioner submits a brief and supporting evidence specifying errors of law and fact in the underlying decision. This documentation is sufficient to overcome the grounds for our summary dismissal of the appeal. Accordingly, we consider the merits of the motions below.

B. Eligibility for U Nonimmigrant Status

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

In denying the U petition, the Director concluded that the Petitioner was inadmissible based upon the underlying denial of his waiver application. The Director found that the Petitioner was inadmissible under sections 212(a)(2)(A)(i)(I) (conviction or commission of a crime involving moral turpitude), 212(a)(2)(A)(i)(II) (controlled substance conviction) and 212(a)(6)(A)(i) (present without admission or parole) of the Act. On motion, the Petitioner contests the finding of inadmissibility for having been convicted of a crime involving moral turpitude (CIMT). The Petitioner notes that the Director failed to specify which conviction supported the CIMT inadmissibility ground and argues that he has not been convicted of a CIMT.

Although we acknowledge this argument, the Petitioner does not contest the Director's determinations that he is inadmissible due to a controlled substance conviction or due to his presence in the United States without having been admitted or paroled. Instead, the Petitioner highlights various factors tending to show that the Director should have granted the waiver application as a matter of discretion. The Petitioner contests the Director's factoring in of arrests that did not result in convictions and notes that the Director counted two arrests relating to the same offense as separate offenses. He further argues that the Director should have assigned less negative weight to the criminal convictions on record, as they were not felonies and were committed several years prior to the decision. The

¹ The Petitioner has filed a new waiver application with our office to accompany this motion. The current filing instructions for waiver applications indicate that U petitioners must file Form I-192 with the Vermont or Nebraska Service Centers, depending on home address. USCIS, *Instructions for Form I-192, Application for Advance Permission to Enter as a Nonimmigrant*, <https://www.uscis.gov/i-192>. Form instructions have the weight of regulations. 8 C.F.R. § 103.2(a)(1). The updated waiver application was not filed according to the instructions because our office is not a designated filing location. We will not consider the updated waiver application in deciding this motion.

Petitioner also contends that the positive factors present in the case were generally disregarded and asks us to reverse the Director's discretionary denial and approve the U petition.

As noted above, our review 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 grounds of inadmissibility for a controlled substance conviction or for being present without admission or parole. The Petitioner does not otherwise assert that the Director erred in finding him inadmissible to the United States on these grounds. Therefore, we must dismiss the motions.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.