



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

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

In Re: 24887937

Date: JAN. 11, 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 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.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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.

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

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 a 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 appeal. The Petitioner further requested that the initial waiver decision be reconsidered. However, any motion to reconsider the decision on the underlying waiver application must be made by filing a Form I-290B with the office that made the initial decision, the Vermont Service Center.

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 section 212(a)(6)(A)(i) (present without admission or parole) of the Act.

The Petitioner does not contest the Director's determination that he is inadmissible due to his presence in the United States without having been admitted or paroled. Instead, the Petitioner bases the appeal on the Director's discretionary waiver decision, highlighting various factors tending to show that the Director should have granted the waiver application.²

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 ground of inadmissibility due to the above-listed section of the Act. In addition, the Petitioner does not otherwise assert that the Director erred in finding him inadmissible to the United States on this ground. Therefore, we must dismiss the appeal.

ORDER: The appeal is dismissed.

² The Petitioner indicates that the Director erred as a matter of law in denying the U petition, noting that he clearly was the victim of a qualifying crime and met all eligibility requirements. However, the Director did not find otherwise; the director's U petition decision was based solely on the finding that the Petitioner had not established his admissibility.