



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

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

In Re: 27859229

Date: SEP. 21, 2023

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. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director of the Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner had not established she was admissible to the United States, as required. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief and additional evidence.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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 withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

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 he is 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 must file a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (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 entered the United States without inspection, admission, or parole on or about September 1995. In September 2014, the Petitioner was granted Deferred Action for Childhood Arrivals (DACA) until September 2016, which was revoked in August 2016 when removal proceedings were initiated against the Petitioner. In August 2017, the Petitioner was granted voluntary departure by an Immigration Judge and she remains in Mexico.

The Director denied the U petition, concluding that the Petitioner was inadmissible under sections 212(a)(6)(A)(i) (present in the United States without being admitted or paroled) and 212(a)(7)(B)(i)(I) (nonimmigrant not in possession of a valid passport) of the Act. The Director also noted that the Petitioner did not submit a waiver application, as previously requested by the Director in the request for evidence.

On appeal, the Petitioner contests the Director's determination that she is inadmissible and asserts that she last entered the United States in 1995, having been admitted, inspected, and/or paroled when she was "waved through" the border checkpoint by immigration authorities. In reference to the passport requirement, she indicates that she was admitted to the United States despite her lack of a passport at the time of her entry.¹

A. Inadmissibility Under Section 212(a)(6)(A)(i) of the Act

The Act clearly states that "[a foreign national] present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." Section 212(a)(6)(A)(i) of the Act.

Here, the Petitioner departed the United States on August 25, 2017, and explains on appeal that she has been living in Mexico since that date. According to the Petitioner, and U.S. immigration records, the Petitioner has not entered the United States since her departure in August 2017. Section 212(a)(6)(A)(i) of the Act only applies to individuals who are present in the United States in violation of said section of the Act. *See Adjudicator's Field Manual* Chapter 40.6.2(a)(3)(ii), <https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm40-external.pdf>. Inadmissibility does not continue after the foreign national has departed the United States. *Id.* Given that the Act requires the Petitioner be "present in the United States," in order to be inadmissible, we conclude that the Petitioner is not inadmissible under section 212 (a)(6)(A)(i) of the Act.²

B. Inadmissibility Under Section 212(a)(7)(B)(i)(I) of the Act

The Act also states that "[a]ny nonimmigrant who is not in possession of a passport valid . . . from the date of the . . . contemplated initial period of stay authorizing the [foreign national] to return to the

¹ Although the Petitioner indicated on appeal that she was also filing a waiver application, USCIS records do not reflect that one has been filed.

² Therefore, while we acknowledge the Petitioner's assertions on appeal, we will not discuss them further.

country from which the [foreign national] came or to proceed to and enter some other country during such period, is inadmissible.” Section 212(a)(7)(B)(i)(I) of the Act.

Here, the Petitioner filed her U petition in January 2017 and the record includes a copy of the biographical page of the Petitioner’s Mexican passport, issued in September 2012, and valid through September 2018. Given that the Petitioner had a valid passport when she filed her U petition, we conclude that she is not inadmissible under section 212(a)(7)(B)(i)(I) of the Act.

III. CONCLUSION

Based on the evidence in the record and the foregoing analysis, we conclude that the Petitioner is not inadmissible under sections 212(a)(6)(A)(i) (present in the United States without being admitted or paroled) and 212(a)(7)(B)(i)(I) (nonimmigrant not in possession of a valid passport) of the Act. As such, we will remand the matter to the Director for consideration of whether the Petitioner satisfies the remaining statutory eligibility criteria for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.