



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

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

In Re: 28357945

Date: OCT. 17, 2023

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks U 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 Petitioner's Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that he did not establish his admissibility. The Director likewise denied his corresponding Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), as a matter of discretion. The denial of the Petitioner's U petition is now before us on appeal. 8 C.F.R. § 103.3. 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.

To establish eligibility for U nonimmigrant classification, petitioners must establish 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 must file the 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). U.S. Citizenship and Immigration Services 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). The denial of a waiver 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.

The Director determined that the Petitioner was inadmissible under the following sections of the Act:

- 212(a)(2)(A)(i)(I) - Conviction or Commission of a Crime Involving Moral Turpitude, relating to arrests and convictions for Dangerous Drug Violations;
- 212(a)(2)(A)(i)(II) - Controlled Substance Conviction (or Conspiracy or Attempt), Relating to arrests and convictions for Dangerous Drug Violations; and
- 212(a)(2)(C)(i) - Suspected or Convicted Controlled Substance Trafficker, relating to arrests and convictions for Dangerous Drug Violations.

The Director determined that the Petitioner did not warrant a waiver of the applicable inadmissibility grounds as a matter of discretion, and denied the waiver application on that basis.

On appeal, the Petitioner contests the Director's determination of inadmissibility under sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Act, noting that his three felony convictions relating to controlled substances were vacated, his indictment was dismissed, his guilty plea was withdrawn, and his civil rights were restored.

The Petitioner does not contest inadmissibility under section 212(a)(2)(C)(i) of the Act, which does not require a conviction, but only requires "a reason to believe" the noncitizen "is or has been an illicit trafficker in any controlled substance..."

As stated above, 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 on the Petitioner's waiver application. As the Petitioner does not contest inadmissibility under section 212(a)(2)(C)(i) of the Act, the Petitioner has not demonstrated the Director erred in finding him inadmissible to the United States under this section of the Act. Thus, the Petitioner has not overcome the Director's finding of inadmissibility.¹

The Petitioner has not established that he is admissible to the United States or that all applicable grounds of inadmissibility have been waived. Accordingly, he is ineligible for U nonimmigrant classification.

ORDER: The appeal is dismissed.

¹ Because our previous analysis is dispositive of his appeal, we hereby defer adjudication of whether the vacatur of the Petitioner's controlled substance felony convictions is a valid vacatur for immigration purposes and reserve the issue of whether the Petitioner is inadmissible under sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Act. Because the Petitioner has not established that he was erroneously deemed inadmissible under section 212(a)(2)(C)(i) of the Act, he would remain inadmissible under that section even if we found the Petitioner's arguments pertaining to sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Act persuasive. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).