



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

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

MATTER OF A-M-A-C

DATE: NOV. 15, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: 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, Vermont Service Center, denied the Form I-918, Petition for U Nonimmigrant Status (U petition). The Director concluded that the U petition was not approvable because the record established the Petitioner's inadmissibility and the Petitioner's Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), requesting a waiver of the grounds of inadmissibility, had been denied.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and asserts that the Director abused discretion by denying her U petition based on the denial of her waiver application.

Upon *de novo* review, we will dismiss the appeal.

**I. APPLICABLE LAW**

Section 212(d)(14) of the Act requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a U petition and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. A petitioner bears the burden of establishing that he or she is admissible to the United States or that any grounds of inadmissibility have been waived. See 8 C.F.R. § 214.1(a)(3)(i).

For individuals seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv) require the filing of a waiver application in conjunction with the U petition in order to waive any ground of inadmissibility. The regulation at 8 C.F.R. § 212.17(b)(3) states, in pertinent part: "[t]here is no appeal of a decision to deny a waiver." Although the regulations do not provide for appellate review of the Director's discretionary denial of

(b)(6)

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a waiver application, we may, however, consider whether the Director's underlying determination of inadmissibility was correct.

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico whom the record of proceedings shows entered the United States in 2000 as a B-2 visitor. On [REDACTED] 2013, the Petitioner was convicted in the Superior Court of the State of Arizona, [REDACTED] of possession or use of marijuana, a class 1 misdemeanor, in violation of section 13-3405 of the Arizona Revised Statutes, for which she was sentenced to two years of probation, fines, and other conditions ordered by the court. The record of proceedings shows that on [REDACTED] 2012, the Petitioner was issued a Notice to Appear before an Immigration Judge, placing her in removal proceedings.

On [REDACTED] 2006, the Petitioner was the victim of domestic violence and assault. Based on her victimization, the Petitioner filed the instant U petition and a waiver application. The Director subsequently issued a request for evidence (RFE) with respect to the waiver application for arrest reports and court documents related to the Petitioner's arrests and evidence to demonstrate that USCIS should exercise discretion to approve her application. The Petitioner responded with additional evidence. The Director then denied the waiver application, determining that the Petitioner did not merit a favorable exercise of discretion to waive the applicable grounds of inadmissibility under sections 212(a)(7)(B)(i)(I) and 212(a)(2)(A)(i)(II) of the Act for not being in possession of valid documents and for a violation relating to a controlled substance. The Director consequently denied the U petition because the waiver application had been denied.

## III. ANALYSIS

On appeal, the Petitioner contends that the Director erred in denying the waiver application because she is only inadmissible for a controlled substance conviction and evidence indicates that substance abuse or self-medication by victims of severe trauma and child abuse is extremely common as a coping mechanism. The Petitioner argues that although she was arrested on several counts, she was convicted of only possession or use of marijuana, a class 1 misdemeanor that it is not a felony conviction, and that it is a manifestation of her trauma as a victim of child abuse, sexual assault, and domestic violence. She refers to a psychological report, states that she is being rehabilitated, and contends that the Director did not recognize that her only inadmissibility ground is linked to her victimization. She further asserts that it is in the public interest to support traumatized victims.

Our review of the record, as supplemented on appeal, is limited to whether or not the Petitioner is inadmissible and therefore requires a waiver of her ground(s) of inadmissibility before she can be granted U-1 nonimmigrant status. On appeal, the Petitioner does not contest the findings of inadmissibility, only that the Director did not consider her conviction as a manifestation of her abuse.

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The Director also found the Petitioner inadmissible for not being in possession of valid documents. On appeal, the Petitioner submits a copy of the biographic page from her Mexican passport. However, the passport was only valid from April 17, 2015, to April 17, 2016.

As we have no jurisdiction to consider the Director's decision on the waiver application, we must dismiss the appeal.

#### IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-M-A-C*, ID# 35061 (AAO Nov. 15, 2016)