



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

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

MATTER OF V-J-R-R-

DATE: SEPT. 26, 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 with additional evidence and asserts that he has changed his behavior.

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 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, a native and citizen of Mexico, represents that he entered the United States in September 2000 without inspection or parole and has not departed since that time. The record of proceedings indicates that the Petitioner was convicted in 2009 of reckless driving under section 23103.5 of the California Vehicle Code; in 2010 for possession of a controlled substance under section 11350(a) of the California Health and Safety Code, which was later vacated; and in 2012 for possession of an assault weapon under section 12280(b) of the California Penal Code. The Petitioner was issued a Notice to Appear before an Immigration Judge, and he was subsequently the victim of assault with a deadly weapon. Based on his 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 evidence pertaining to the Petitioner's criminal history and to request a copy of the Petitioner's valid passport. The Petitioner responded to the RFE and 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)(6)(A)(i) and 212(a)(7)(B)(i)(I) of the Act (present in the United States without being admitted or paroled, and not in possession of a valid passport, respectively). The Director consequently denied the U petition because the waiver application had been denied.

## III. ANALYSIS

On appeal, the Petitioner maintains that his criminal convictions are neither crimes involving moral turpitude nor crimes of violence; that he has submitted sufficient evidence that he has changed his behavior; that he is the sole breadwinner for his family; and that he provides care for his spouse because of her health. As evidence, the Petitioner submits letters of support, financial documentation, and medical information.

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 his ground(s) of inadmissibility before he can be granted U-1 nonimmigrant status. On appeal, the Petitioner does not contest the findings of inadmissibility, which the Director determined to be under sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(I) of the Act. 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 V-J-R-R-*, ID# 11495 (AAO Sept. 26, 2016)