



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

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

In Re: 6820589

Date: JULY 27, 2020

Motion on Administrative Appeals Office Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity 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 the Petitioner did not establish her admissibility, as required. The Director concurrently denied the Petitioner’s Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), finding that a favorable exercise of discretion was not warranted. We dismissed the Petitioner’s subsequent appeal of the denial of the U petition, and the matter is now before us on a motion reconsider. Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of the law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record as the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Although the Petitioner presents new legal arguments on motion, they are ultimately insufficient to establish her eligibility.

The burden of proof is on the petitioner to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

In our prior decision, incorporated here by reference, we determined that the Petitioner had not established her eligibility for U-1 nonimmigrant status because she had not established that she was admissible to the United States or that the applicable grounds of inadmissibility had been waived, as required. We first noted that the record indicated that the Petitioner had previously sought lawful permanent resident status based on a marriage that was not entered into in good faith, which supported the Director’s determination that she was inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure an immigration benefit through fraud or misrepresentation. We further explained that the Petitioner had not demonstrated that the applicable ground of inadmissibility had been waived,

as the Director denied the waiver application and we lacked the authority to review the decision. *See* 8 C.F.R. § 212.17(b)(3) (explaining that the decision to deny a waiver application is not appealable). The Petitioner has not overcome this determination on motion.

On motion, the Petitioner asserts that the Director made numerous errors in denying the waiver application, as the Director incorrectly: relied on section 212(a)(6)(C) of the Act, which governs waivers for fraud and misrepresentation generally, rather than employing the appropriate legal standard for U petitioners at section 212(d)(14) of the Act; applied a *per se* bar to U status for fraud and misrepresentation; did not analyze whether her waiver application should be granted in the public or national interest; disregarded the compelling humanitarian factors of her case—including repeated victimization during her lifetime, cooperation with law enforcement, church membership, employment, and her spouse’s recovery from illness in the United States; did not demonstrate that she is a threat to society; afforded too much weight to her immigration violation; and summarily dismissed evidence of hardship to her U.S. citizen spouse. The Petitioner submits copies of previously submitted evidence in support of her claim.

Although we acknowledge these arguments, our review on motion to reconsider is limited to whether we incorrectly applied the law or USCIS policy in our prior decision. 8 C.F.R. § 103.5(a)(3). Here, however, the Petitioner has not asserted that the Administrative Appeals Office (AAO) committed legal error. Regardless, as previously stated, we lack the authority to review the Director’s discretionary determination or to adjudicate a waiver application. 8 C.F.R. § 212.17(b)(3). As the Petitioner has not demonstrated legal error in our prior decision and has not established that she is admissible to the United States, the motion to reconsider will be dismissed.

ORDER: The motion to reconsider is dismissed.