

In the
United States Court of Appeals
For the Seventh Circuit

No. 19-1999

YEISON MEZA MORALES,

Petitioner,

v.

WILLIAM P. BARR, Attorney General of the United States,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals.
No. A216-222-551

ARGUED APRIL 7, 2020 — DECIDED JUNE 26, 2020

AMENDED SEPTEMBER 3, 2020

Before ROVNER, HAMILTON, and BARRETT, *Circuit Judges*.

BARRETT, *Circuit Judge*. Yeison Meza Morales is a native and citizen of Mexico who entered the United States without inspection as a child. As an adult, Meza Morales petitioned for U nonimmigrant status, a special visa for victims of certain crimes. While his petition was pending, he was charged as re-

movable based on two grounds of inadmissibility. Meza Morales cited his pending U visa petition as a defense to his removal. The immigration judge agreed to waive both grounds of inadmissibility to allow him to pursue the U visa petition, but later ordered Meza Morales removed as charged on those same grounds.

Meza Morales petitioned us for review of the removal order. He contends that the immigration judge's initial waiver of both grounds of inadmissibility precluded their use as grounds for an order of removal. We disagree; Meza Morales's position would effectively turn the inadmissibility waiver into a substitute for the U visa itself. We nevertheless grant his petition for review on two other bases. Meza Morales had asked the immigration judge to continue or administratively close his case instead of ordering removal. The immigration judge entered the removal order based on the conclusion that those alternative procedures were inappropriate, and the Board affirmed on the same basis. But those alternatives were wrongly rejected. We grant the petition for review and remand the case so that the Board can reconsider.

I.

A noncitizen who becomes a victim of certain crimes while in the United States may petition for U nonimmigrant status—more commonly known as a U visa. 8 U.S.C. § 1101(a)(15)(U). Congress created the visa to encourage crime victims to report crimes and assist law enforcement with investigation and prosecution. A U visa generally entitles an eligible noncitizen to lawfully remain in the United States and to seek work authorization. *Id.* § 1184(p)(6).

The decision whether to grant a U visa petition is committed by statute to the Secretary of Homeland Security, who exercises this authority through U.S. Customs & Immigration Services (USCIS). *See* 8 C.F.R. § 214.14. To qualify for a U visa, a noncitizen must satisfy four substantive criteria: (1) he must have suffered “substantial physical or mental abuse” as the result of one of the crimes listed in the U visa provision; (2) he must possess credible and reliable knowledge of the details of the crime; (3) he must help or be likely to be helpful in the investigation or prosecution of the crime; and (4) the crime must have taken place in the United States. *Id.* § 214.14(b).

In addition to those specific requirements, a noncitizen seeking a U visa must be “admissible” to the United States—in other words, eligible for a visa and lawful entry into the United States. 8 U.S.C. § 1182(a). There are several reasons why a noncitizen may be “inadmissible” and therefore ineligible for a visa. Among them are convictions for certain crimes and being present in the United States without having been inspected and authorized by an immigration official. *See id.* §§ 1101(a)(13)(A), 1182(a)(6)(A)(i).

But inadmissibility is not a complete obstacle to acquiring a U visa; a noncitizen can apply to have her inadmissibility waived for the purpose of petitioning for U nonimmigrant status. In this circuit, there are two ways for a U visa petitioner to secure a waiver of inadmissibility. The first is by application to USCIS. Congress provided that the Secretary of Homeland Security can waive almost any ground of inadmissibility for a noncitizen who is applying for a U visa. 8 U.S.C. § 1182(d)(14). USCIS implements this U visa inadmissibility waiver program on behalf of the Secretary, granting a waiver application if it determines that it is “in the public or national

interest” to do so. 8 C.F.R. § 212.17(b)(1). Because USCIS is also the office that decides whether to grant or deny U visas, a noncitizen pursuing this route may seek a waiver and a U visa at the same time. *Id.* § 214.14(c)(2)(iv).

U visa petitioners in this circuit have an additional option for obtaining a waiver of inadmissibility. Congress gave the Attorney General the authority to waive most grounds of inadmissibility listed in § 1182(a) for certain noncitizens seeking admission. 8 U.S.C. § 1182(d)(3)(A). In *L.D.G. v. Holder*, we held that the Attorney General’s general inadmissibility waiver authority extends to U visa petitioners, notwithstanding the narrower provision allowing the Secretary of Homeland Security to waive inadmissibility specifically for U visa applicants. 744 F.3d 1022, 1030 (7th Cir. 2014). Thus, U visa petitioners can seek a waiver of inadmissibility from the Attorney General as well as from USCIS.¹ And as delegates of the Attorney General, immigration judges have the power to grant waivers of inadmissibility—for example, during removal proceedings when noncitizens invoke their forthcoming U visa petition as a defense to removal. *Baez-Sanchez v. Sessions*, 872 F.3d 854, 856 (7th Cir. 2017). This alternative waiver procedure can create coordination problems because

¹ There is a circuit split on this issue. The Eleventh Circuit has followed us in holding that the Attorney General can grant a waiver of inadmissibility. *Meridor v. U.S. Att’y Gen.*, 891 F.3d 1302 (11th Cir. 2018). The Third and Ninth Circuits, by contrast, have held that U visa petitioners can pursue a waiver of inadmissibility only from USCIS. *Sunday v. Att’y Gen. of the U.S.*, 832 F.3d 211 (3d Cir. 2016); *Man v. Barr*, 940 F.3d 1354 (9th Cir. 2019). At oral argument in this case, the government expressed frustration with the inconsistency. But the government has not asked us to overrule *L.D.G.*, which we have recently reaffirmed. *Baez-Sanchez v. Barr*, 947 F.3d 1033 (7th Cir. 2020).

two different arms of the executive branch grant the waiver and the visa. These coordination problems are on full display in this case.

But before we get to the procedural posture of Meza Morales's case, another feature of the U visa scheme bears mention: the waiting list. By statute, USCIS may issue no more than 10,000 U visas per calendar year. 8 U.S.C. § 1184(p)(2)(A). Many more than 10,000 applicants meet the criteria for U status each year, *see L.D.G.*, 744 F.3d at 1024, so USCIS places on a waiting list all eligible U visa petitioners who would be granted a visa if not for the statutory cap. 8 C.F.R. § 214.14(d)(2). It grants U visas to petitioners on the waiting list in chronological order. *Id.* In the meantime, petitioners on the U visa waiting list are granted deferred action—a form of prosecutorial discretion that allows a noncitizen to lawfully remain in the United States for a fixed period of time but does not provide legal status. *Id.* It is the policy of Immigration and Customs Enforcement (ICE), the office within the Department of Homeland Security (DHS) responsible for immigration enforcement, not to deport a U visa petitioner who has been placed on the waitlist and granted deferred action. *Revision of Stay of Removal Request Reviews for U Visa Petitioners*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT (Aug. 2, 2019), <https://www.ice.gov/factsheets/revision-stay-removal-request-reviews-u-visa-petitioners> [hereinafter *ICE Fact Sheet*].

With the U visa scheme laid out, we turn to the present case. Meza Morales is a native and citizen of Mexico. As a child, he entered the United States without inspection in December 2002, and he has lived in the United States ever since. In October 2013, Meza Morales was walking home through his neighborhood in Indianapolis when he encountered a

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