U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: DEC 10 2014 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U).

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director denied the petition because the petitioner was a lawful permanent resident (LPR) of the United States at the time he filed the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), and, therefore, was ineligible to be a nonimmigrant. On appeal, counsel submits a final voluntary departure order issued by an immigration judge.

Applicable Law

Section 101(a)(15)(U) of the Act, provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity, as well as the victims' qualifying family members. Section 101(a)(15) of the Act, defines the term "immigrant" as "every alien except an alien who is within one of the following classes of nonimmigrant aliens." Section 101(a)(15)(U) of the Act is one such nonimmigrant classification that is not included in the definition of "immigrant" at section 101(a)(15) of the Act.

Facts and Procedural History

The petitioner is a native and citizen of Mexico, who was admitted to the United States as an LPR on March 19, 1997. Removal proceedings were initiated against the petitioner on February 25, 2013, due to his criminal convictions in the State of Illinois for the offenses of Domestic Battery and Obstruction of Justice. An immigration judge issued a final order on February [redacted] finding the petitioner removable from the United States as charged and granting him voluntary departure. The record indicates that the petitioner voluntarily departed the United States on February [redacted]

The petitioner filed the instant Form I-918 U petition on June 18, 2013, along with a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192 waiver). On January 27, 2014, the director denied the Form I-918 U petition, noting the petitioner's ineligibility for nonimmigrant classification because of his LPR status at the time he filed the petition. Specifically, the director, citing *Matter of A*, 6 I&N Dec. 651 (BIA 1995), stated that an alien may not be both an immigrant and a nonimmigrant at the same time. The director also noted that the definition of "immigrant" at section 101(a)(15) of the Act does not include an alien described at section 101(a)(15)(U) of the Act. The petitioner filed a timely appeal. On appeal, counsel requests reopening and reconsideration because the petitioner's LPR status has now terminated because the petitioner was granted voluntary departure and departed the United States.

Analysis

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ,* 381 F.3d 143, 145 (3d. Cir. 2004). Upon review of the record, we concur with the director's decision to deny the petition.

Lawful permanent resident status terminates upon entry of a final administrative order of removal. 8 C.F.R. § 1.2 (defining *Lawfully admitted for permanent residence*); 1001.1(p); s*ee also Etuk v. Slattery*, 936 F.2d 1433, 1447 (2d Cir. 1991) (citing *Matter of Gunaydin,* 18 I&N Dec. 326 (BIA 1982)). Lawful permanent residency does not end upon commission of acts which may render the resident inadmissible or removable, but upon entry of a final administrative order of removability based on such acts. *Matter of Gunaydin,* 18 I&N Dec. at 328. At the time the petitioner filed the instant Form I-918 U petition in June 2013, removal proceedings against the petitioner remained pending and had not yet resulted in a final administrative order. The petitioner is required to establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). Consequently, as a lawful permanent resident, the petitioner was ineligible for nonimmigrant U classification at the time he filed his Form I-918 U petition.[1]

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.

[1] As noted by the director in his decision, section 101(a)(15) of the Act defines the term "immigrant" as "every alien except an alien who is within one of the following classes of nonimmigrant aliens." Section 101(a)(15)(U) of the Act is one such nonimmigrant classification that is not included in the definition of "immigrant" at section 101(a)(15) of the Act. The statute and regulations do not permit a lawful permanent resident to adjust status to that of a U nonimmigrant. The Act allows an alien to change from one nonimmigrant classification to another and permits lawful permanent residents to adjust to A, E and G nonimmigrant classification, but the Act contains no provision for the adjustment of a lawful permanent resident to U nonimmigrant status. *See* Sections 247, 248 of the Act, 8 U.S.C. §§ 1257, 1258.