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

(b)(6)

U.S. Citizenship and Immigration Services

Date: SEP 2 9 2014 Office: VERMONT SERVICE CENTER File:

IN RE: PETITIONER:

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:

SELF-REPRESENTED

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 Vermont Service Center director ("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 and the petition will remain denied.

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 is currently a lawful permanent resident (LPR) of the United States and, therefore, ineligible to be a nonimmigrant. The director also briefly noted that the petitioner did not appear admissible to the United States and had not established that he: was the victim of qualifying criminal activity; suffered substantial physical or mental abuse as a result of his victimization; or possesses information about and was helpful to a certifying agency in the investigation or prosecution of qualifying criminal activity. On appeal, the petitioner contends that he is under a final order of removal from the United States and is therefore not a lawful permanent resident.

Applicable Law

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.

Section 101(a)(15)(U) of the Act, 8 U.S.C. § 1101(a)(15)(U), provides for U nonimmigrant classification to:

> (i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --
>
> (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
>
> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
>
> (III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

* * *

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: . . . sexual assault; . . . obstruction of justice; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . .:

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. . . .

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. . . .; and

> (4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

> The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by [U.S. Citizenship and Immigration Services (USCIS)]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R § 214.1(a)(3)(i). For aliens 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 an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

Facts and Procedural History

The petitioner is a native and citizen of Uganda, who was accorded lawful permanent resident (LPR) status on July 24, 2002. Removal proceedings were initiated against the petitioner on [redacted] 2008, due to his criminal convictions in the State of California for the offenses of Corporal Injury to Spouse/Cohabitant/Child's Parent in violation of section 273.5(a) of the California Penal Code (CPC) and Corporal Injury to Child in violation of CPC § 273d(a). An Immigration Judge found the petitioner removable as charged, and on [redacted] 2009, denied the petitioner's applications for relief and ordered him removed from the United States. The Board of Immigration Appeals (Board) dismissed the petitioner's appeal of the removal order on December 31, 2009. The petitioner appealed the Board's decision to the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit), which denied the petition for review in April 2012. The petitioner subsequently filed a petition for rehearing with the Ninth Circuit on [redacted] 2012, which was also denied. The record shows that the petitioner was removed from the United States on August 5, 2014.

The petitioner filed the Form I-918 U petition on May 16, 2012. On March 8, 2013, the director denied the Form I-918 U petition noting the petitioner's ineligibility for U nonimmigrant classification because of his LPR status. The petitioner filed an appeal, contending that the

director's decision is incorrect because the petitioner is subject to a final order of removal and is no longer a LPR.

Claimed Criminal Activity

In the petitioner's letter to the Police Department requesting records, he indicated that he was a victim of a violent attack committed against him for no apparent reason sometime in the middle to the late 1990s. He stated that he was hospitalized and lost a tooth due to the attack.

The Form I-918 Supplement B that the petitioner submitted was signed by Lieutenant Police Department (certifying official), in California on March 8, 2012. In Part 3.1 of the form, the certifying official lists the criminal activity of which the petitioner was a victim as "Attempt to commit any of the named crimes," clarifying in Part 3.3 that the criminal activity is "Attempt-Robbery" but not providing a corresponding statutory citation. Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, was left blank, as was Part 3.6, asking for a description of any known or documented injuries to the petitioner.

Analysis

The Petitioner's Lawful Permanent Resident Status

Upon review of the record, we conclude that the petitioner was ineligible for U nonimmigrant classification because his LPR status had not yet terminated at the time he filed the Form I-918 U petition. As noted by the director in his decision, citing *Matter of A*, 6 I&N Dec. 651 (BIA 1995), an alien may not be both an immigrant and a nonimmigrant at the same time. Further, 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[.]" (Emphasis added). Section 101(a)(15)(U) of the Act refers to 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 also 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.

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)*;see 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. Here, at the time the petitioner filed the instant Form I-918 U petition, the removal order issued against the petitioner was the subject of

an ongoing appellate process and was not yet final, given that the petitioner had filed multiple petitions for review of the removal order with the Ninth Circuit. As the removal proceedings against the petitioner had not yet resulted in a final order of removal at the time the petitioner filed the Form I-918 U petition, we do not find that the petitioner's LPR had terminated at the time of the filing. Accordingly, the petitioner remained an immigrant at the time and was statutorily ineligible for U nonimmigrant classification. The petitioner must 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).

The Petitioner Was Not a Victim of Qualifying Criminal Activity

The director indicated that the petitioner had failed to show that he was a victim of a qualifying criminal activity and had not demonstrated that he satisfied the eligibility requirements for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. Although the director did not discuss this determination in any probative detail, the record before us supports the director's determination.

The Form I-918 Supplement B indicates that the crime of attempted robbery was investigated or prosecuted. The crime of robbery is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Further, the petitioner does not contend, and has not provided evidence, that the offense of robbery is substantially similar to any of the enumerated qualifying criminal activities. The petitioner has, therefore, failed to establish that he was the victim of a qualifying crime, as required by section 101(a)(15)(U)(i) of the Act.

Conclusion

The petitioner was a lawful permanent resident at the time the Form I-918 U petition was filed, and consequently, was not eligible for U nonimmigrant classification. Further, the petitioner has not demonstrated that he was a victim of a qualifying crime or a crime that is substantially similar to qualifying criminal activity listed at section 101(a)(15)(U)(iii) of the Act. Qualifying criminal activity is a requisite to each statutory element of U nonimmigrant classification. The petitioner's failure to establish that the offense of which he was the victim is qualifying criminal activity prevents him from meeting any of the eligibility criteria for U nonimmigrant classification at section 101(a)(15)(U)(i) of the Act.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.