



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

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

MATTER OF S-G-

DATE: NOV. 18, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-914, APPLICATION FOR T NONIMMIGRANT STATUS

The Applicant seeks nonimmigrant classification as a victim of a severe form of trafficking in persons. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(T)(i), 8 U.S.C. § 1101(a)(15)(T)(i). The Deputy Director, Vermont Service Center, denied the application after determining that the Applicant could not be granted T nonimmigrant status because he still held lawful permanent resident status and could not simultaneously be an immigrant and nonimmigrant. The matter is now before us on appeal. The appeal will be dismissed.

#### I. 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)(T) 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 regulation at 8 C.F.R. § 214.11(1) prescribes, in pertinent part, the standard of review and the Applicant’s burden of proof in these proceedings:

- (1) *De novo review.* [U.S. Citizenship and Immigration Services (USCIS)] shall conduct a de novo review of all evidence submitted and is not bound by its previous factual determinations as to any essential elements of the T nonimmigrant status application. . . . [USCIS] will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.
- (2) *Burden of proof.* At all stages of the processing of an application for any benefits under T nonimmigrant status, the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility for the desired benefit.

#### II. PERTINENT FACTS

The Applicant is a citizen of Trinidad who became a conditional lawful permanent resident on September 6, 2005, and had conditions on his status removed on December 24, 2008. He last entered the United States on August 5, 2010, as a lawful permanent resident. The Applicant filed the

instant Form I-914, Application for T Nonimmigrant Status, with U.S. Citizenship and Immigration Services (USCIS) on October 12, 2011. The Deputy Director issued a request for evidence (RFE), advising the Applicant that he could not be a nonimmigrant if he was already a lawful permanent resident, and seeking clarification of the Applicant's status. The Applicant timely responded.

On February 28, 2013, the Deputy Director found that the Applicant did not establish his eligibility for T nonimmigrant status and denied the Form I-914. In her denial decision, the Deputy Director cited *Matter of A*, 6 I&N Dec. 651 (BIA 1955), and determined that the Applicant could not be granted T nonimmigrant status because he still held lawful permanent resident status and could not simultaneously be an immigrant and nonimmigrant. On the same day, the Deputy Director denied the Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, determining that the Applicant was inadmissible as a T nonimmigrant because he was a lawful permanent resident of the United States.<sup>1</sup> The Applicant timely appealed the denial of the Form I-914. On appeal, the Applicant briefly discusses the procedural history of his case, and provides evidence suggesting that he has requested that U.S. Immigration and Customs Enforcement (USCIS) commence removal proceedings against him, but includes no evidence that he has lost his lawful permanent resident status, and otherwise provides no arguments in rebuttal to the Deputy Director's stated reason for the denying the application. He submits a new Form I-192 on which he suggests that he may be inadmissible to the United States based on two criminal convictions.

### III. ANALYSIS

The record shows that the Applicant is currently a lawful permanent resident of the United States, and has been a lawful permanent resident of the United States since December 24, 2008. Lawful permanent resident status terminates upon entry of a final administrative order of removal, and there is no evidence that an order of removal has been entered against the Applicant. He, therefore, remains an immigrant. 8 C.F.R. § 1.2 (definition of "lawfully admitted for permanent residence"); *see also Etuk v. Slattery*, 936 F.2d 1433, 1447 (2d Cir. 1991) (citing *Matter of Gunaydin*, 18 I&N Dec. 326 (BIA 1982)). In addition, lawful permanent residency may be lost through abandonment, rescission, or relinquishment. *See Matter of Gunaydin*, 18 I&N Dec. at 327. However, none of those circumstances in this case.

Eligibility for a benefit request must be established at the time of filing, particularly for individuals seeking T nonimmigrant classification, who are subject to an annual cap on T-1 nonimmigrant status and are placed on a waiting list, by filing date of the application, if they cannot be granted such status due solely to the cap. *See* 8 C.F.R. §§ 103.2(b)(1), 214.11(m); *c.f. Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978) (an application may not be approved at a future date after the applicant becomes eligible under a new set of facts). In addition, as noted by the Deputy

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<sup>1</sup> Although the Deputy Director did not specify the ground of inadmissibility in the Form I-192 decision, she made this finding within the context of the concurrent Form I-914 decision. Insofar as the Deputy Director suggested that lawful permanent resident status is a ground of inadmissibility under section 212(a) of the Act, that portion of the director's decision is withdrawn.

Director, 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)(T) 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 Act allows an individual 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 T nonimmigrant status. *See* sections 247, 248 of the Act, 8 U.S.C. §§ 1257, 1258.

Accordingly, the Applicant is ineligible for T nonimmigrant status because he is currently a lawful permanent resident. We note that on appeal the Applicant provides a copy of a letter that he sent to USICE, requesting that he be placed in removal proceedings, but provides no evidence that he has obtained a final order of removal from an immigration judge. The Applicant otherwise presents no arguments regarding the Deputy Director’s determination regarding this issue.<sup>2</sup>

#### IV. CONCLUSION

The Applicant bears the burden of proof to establish his eligibility for T nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(1)(2); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the Applicant has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-G-*, ID# 14750 (AAO Nov. 18, 2015)

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<sup>2</sup> The Deputy Director noted that the Applicant was inadmissible to the United States while he remains a lawful permanent resident. Moreover, the Applicant suggests on appeal that he may be inadmissible to the United States based on his criminal record. As the Applicant is ineligible for T nonimmigrant classification based upon his status as a permanent resident, we shall not address his inadmissibility to the United States.