



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF S-M-P-

DATE: OCT. 3, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Applicant seeks "T-1" nonimmigrant classification as a victim of human trafficking. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(T) and 214(o), 8 U.S.C. §§ 1101(a)(15)(T) and 1184(o). The T-1 classification affords nonimmigrant status to victims who assist authorities investigating or prosecuting the acts or perpetrators of trafficking.

The Director, Vermont Service Center, denied the Form I-914, Application for T Nonimmigrant Status (T application), concluding that the Applicant was not eligible for T classification and was not admissible to the United States because he was already a lawful permanent resident of the United States.

The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. The Applicant asserts that he is eligible for T nonimmigrant classification, notwithstanding his lawful permanent resident status.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Act differentiates immigrants from nonimmigrants. *See* section 101(a)(15) of the Act (providing that every alien is an immigrant except those aliens in specified nonimmigrant classifications, including T nonimmigrants). Lawful permanent residents are immigrants. *See* section 101(a)(20) of the Act (defining a lawful permanent resident as a person who has "been lawfully accorded the privilege of residing permanently in the United States *as an immigrant* . . . (emphasis added)."

Lawful permanent residency does not end upon the commission of acts that make the individual removable, but upon its termination, rescission, or relinquishment. *Matter of Gunaydin*, 18 I&N Dec. 326, 328 (BIA 1982). Lawful permanent residency may also be lost through abandonment. *Matter of Huang*, 19 I&N Dec. 749 (1988).

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); 8 C.F.R. § 214.11(l)(2). An

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applicant may submit any evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. 8 C.F.R. § 214.11(l)(1).

II. ANALYSIS

The Applicant is a citizen of Honduras who was afforded lawful permanent resident status in removal proceedings before an Immigration Judge on [REDACTED] 2006. Pursuant to a Form I-862, Notice to Appear, dated [REDACTED] 2015, the Applicant was again placed into removal proceedings, which remain pending. He thereafter filed the instant T application on July 21, 2015. The Director denied the T application as the Applicant was and remains a lawful permanent resident of the United States.

On appeal, the Applicant contends that lawful permanent resident status is not a ground of inadmissibility that makes him ineligible for T nonimmigrant classification, and he maintains that, even if it was, the Director should have fully considered the Applicant's Form I-192, Application for Advance Permission to Enter as Nonimmigrant, in order to waive this inadmissibility ground. The Applicant further asserts that U.S. Citizenship and Immigration Services (USCIS) did not provide a valid reasoning for its "policy prohibition against allowing dual intent for a lawful permanent resident to apply for a T nonimmigrant visa in removal proceedings."

We concur with the Applicant's assertion that lawful permanent residence is not a ground of inadmissibility. However, contrary to the Applicant's contentions, the Director did not deny the application on this basis, nor was the application denied based on a USCIS policy against dual intent.¹ Rather, the Director found that the Applicant, as a lawful permanent resident, was not eligible for T nonimmigrant classification under the Act. Because lawful permanent residents are defined at section 101(a)(20) of the Act as immigrants, and the T nonimmigrant classification is excepted from the definition of immigrant at section 101(a)(15) of the Act, it follows that a lawful permanent resident cannot be granted T nonimmigrant status until the individual's lawful permanent residency has been lost through termination, rescission, relinquishment, or abandonment. Only those lawful permanent residents who seek A, E, or G status may adjust to these specific nonimmigrant classifications.² See section 247 of the Act.

On appeal, the Applicant, citing to section 101(a)(47)(B) of the Act and 8 C.F.R. § 1001.1(p), acknowledges that lawful permanent status terminates only upon an entry of a final administrative

¹ The Applicant asserts that USCIS has authority to allow dual intent for some classifications, including H-1 and L-1 classifications. In fact, under the Act, an H-1 or L-1 nonimmigrant may simultaneously hold such nonimmigrant status and have immigrant intent *to seek* lawful permanent residence. See section 214(b) of the Act (no presumption of immigrant intent if in H-1, L, or V nonimmigrant statuses); 8 C.F.R. §§ 214.2(h)(16), (l)(16). This, however, is entirely different from the issue here where the Applicant is already a lawful permanent resident with no basis under the Act to change his immigrant status to that of a T nonimmigrant, as discussed further in this decision.

² The A, E, and G nonimmigrant classifications are for foreign government officials, treaty traders and investors, and representatives to international organizations, respectively. See 8 C.F.R. § 214.2.

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order of exclusion, deportation, removal, or rescission.³ See also 8 C.F.R. § 1.2 (lawful permanent resident “status terminates upon entry of a final administrative order of exclusion, deportation, or removal.”); see also *Etuk v. Slattery*, 936 F.2d 1433, 1447 (2d Cir. 1991) (citing *Matter of Gunaydin*, 18 I&N Dec. 326 (BIA 1982)). However, he contends that requiring a lawful permanent resident in removal proceedings to have such status terminated pursuant to a final order of removal before he or she may file a T application with USCIS is contrary to section 101(a)(15)(T)(i) of the Act and the congressional intent behind its enactment. The Applicant, however, does not explain why or how the Director’s decision conflicts with the statute or with congressional intent. Likewise, he maintains that USCIS’ regulatory interpretation of the Act is *ultra vires* as it relates to eligibility for T nonimmigrant classification, but again, he does not explain the basis for this assertion. The Applicant further notes that lawful permanent residents are not prohibited from applying for other forms of relief in removal proceedings prior to an issuance of a final removal order. In the first instance, a request for T nonimmigrant classification is not sought before an Immigration Judge in removal proceedings, but rather, before USCIS. Moreover, as discussed, unlike the forms of relief cited by the Applicant, the Act does not allow for his adjustment from that of a lawful permanent resident to a T nonimmigrant.

Lastly, relying on a decision by the U.S. Court of Appeals for the Seventh Circuit (Seventh Circuit), the Applicant contends that an Immigration Judge has authority to review the denial of his Form I-192 waiver application, filed in connection with the instant T application. See *L.D.G. v. Holder*, 744 F.3d 1022 (7th Cir. 2014) (finding that an Immigration Judge had jurisdiction to adjudicate a Form I-192 waiver application filed in connection with a U petition under section 101(a)(15)(U)). He maintains that USCIS’ interpretation that lawful permanent residents in removal proceedings are not eligible to file a T application runs contrary to *L.D.G.*, because such an interpretation means that they would effectively be unable to ever renew their denied waiver applications before an Immigration Judge. However, in a recently issued precedent decision, the Board of Immigration Appeals specifically disagreed with the Seventh Circuit to find that Immigration Judges do not have authority to adjudicate a Form I-192 waiver application filed in connection a U nonimmigrant petition, even within the Seventh Circuit. *Matter of Khan*, 26 I&N Dec. 797 (BIA 2016).

Accordingly, as the Applicant is a lawful permanent resident of the United States, he is ineligible for T nonimmigrant classification.

³ Citing an unpublished district court decision from [REDACTED] the Applicant suggests that lawful permanent resident status may be terminated by other than a final administrative order of removal or by a formal finding of abandonment. However, the district court case has no binding or precedential authority, and regardless, the Applicant has not shown that his lawful permanent resident status was terminated by any means such that he was eligible to file for T nonimmigrant classification.

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III. CONCLUSION

In these proceedings, it is the Applicant'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.

Cite as *Matter of S-M-P-*, ID# 10120 (AAO Oct. 3, 2016)