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



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

D14

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: DEC 02 2010

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the U 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)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

The director denied the petition because the petitioner is a lawful permanent resident of the United States and, therefore, ineligible for nonimmigrant classification. The director also noted that the petitioner appears to be inadmissible to the United States based on several convictions. On appeal, the petitioner contends through counsel that nothing in the Act or the regulations excludes lawful permanent residents from U visa eligibility. *See Brief on Appeal*. Counsel further contends that the director erred in discussing the petitioner's criminal history without first adjudicating her Form I-192 waiver application. *Id.*

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Pursuant to section 214(p)(5) of the Act, 8 U.S.C. § 1184(p)(5), an individual seeking U nonimmigrant status may apply for any other immigration benefit or status for which he or she may be eligible. However, U.S. Citizenship and Immigration Services (USCIS) will grant only one immigrant or nonimmigrant status at a time. *See* 72 Fed. Reg. 53014, 53023 (Sept. 17, 2007).

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The record reflects that the petitioner is a native and citizen of El Salvador who entered the United States as a lawful permanent resident on December 9, 1995. The petitioner suffered a number of convictions in Idaho, and she was served with a notice to appear for removal proceedings on September 28, 2006. On January 3, 2008, the petitioner was the victim of attempted strangulation and battery by her husband. *See Form I-918 Supplement B*; [REDACTED]

The petitioner's husband was convicted of the charges on January 23, 2008. [REDACTED]

[REDACTED]. The record shows that the petitioner has suffered substantial physical and mental abuse as a result of having been a victim of domestic violence. [REDACTED]

[REDACTED] dated Apr. 8, 2008, Dec. 13, 2007, and Feb. 21, 2007; [REDACTED]

The petitioner filed a Petition for U Nonimmigrant Status (Form I-918) on August 11, 2008. On November 10, 2009, the director issued a Request for Evidence stating that although the petitioner was ineligible for U nonimmigrant classification as long as she retained her lawful permanent resident status, she would be provided with an opportunity to submit evidence regarding her eligibility for a waiver of inadmissibility under sections 212(d)(3) and (14) of the Act, 8 U.S.C. § 1182(d)(3),(14). The petitioner responded with evidence regarding her eligibility for a waiver of inadmissibility. The director denied the Form I-918 on April 16, 2010, and the petitioner timely appealed.

Analysis

The petitioner contends that her status as a lawful permanent resident does not preclude eligibility for U nonimmigrant classification because: (1) she is in removal proceedings and is likely to lose her status; (2) the regulations provide that aliens in removal proceedings may apply for U nonimmigrant classification, and do not distinguish between lawful permanent residents and others who are in proceedings; (3) there is nothing in the regulations excluding lawful permanent residents from U visa eligibility; and (4) the USCIS interpretation is ultra vires and inconsistent with congressional intent. *See Brief on Appeal*.

Although the petitioner is in removal proceedings and she may lose her status as a lawful permanent resident as a result of her convictions, she does not yet have a final order of removal. The Act defines "lawfully admitted for permanent residence" as "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the

immigration laws, such status not having changed.” Section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20). Further, lawful permanent residents in removal proceedings do not lose their immigrant status until the order of removal is final. *See* 8 C.F.R. § 1003.39. Therefore, the petitioner retains her status as a lawful permanent resident of the United States.

Pursuant to section 214(p)(5) of the Act, an individual seeking U nonimmigrant classification may apply for any other immigration benefit or status for which she may be eligible. However, as discussed in the supplementary information to the regulation, USCIS will only grant one immigrant or nonimmigrant status or classification at a time. *See* 72 Fed. Reg. at 53018. Further, as noted by the 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)(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. Because the petitioner is a lawful permanent resident of the United States, she is ineligible for U nonimmigrant classification. Finally, because the petitioner may file another Form I-918 if she is issued a final order of removal, the petitioner’s claim that the USCIS interpretation is contrary to the statute and congressional intent lacks merit.

The record reflects that the petitioner is inadmissible under sections 212(a)(2)(A) and (B) of the Act, 8 U.S.C. § 1182(a)(2)(A), (B). The director denied her Form I-192 Application for Advance Permission to Enter as Nonimmigrant, and the AAO has no jurisdiction to review the denial of a Form I-192 submitted in connection with a U visa petition. 8 C.F.R. § 212.17(b)(3). Because the denial of the waiver application was based solely on the Form I-918 denial and not on the merits, a new Form I-192 may be submitted if or when the petitioner files a new Form I-918. *See* 8 C.F.R. § 212.17(b)(3).

Conclusion

Although the petitioner has suffered substantial physical and mental abuse as the victim of criminal activity similar to the qualifying crime of domestic violence, she is not eligible for U nonimmigrant classification because she remains a lawful permanent resident.

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met. Accordingly, the appeal will be dismissed. This dismissal is without prejudice to a future petition for U nonimmigrant classification if the petitioner is issued a final order of removal.

ORDER: The appeal is dismissed.