

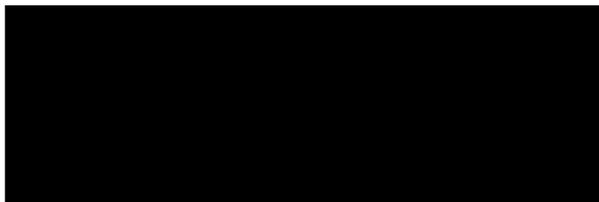
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



D14

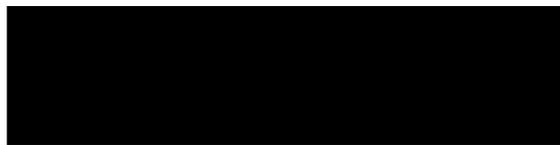
FILE: [Redacted] Office: VERMONT SERVICE CENTER

Date: SEP 29 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:

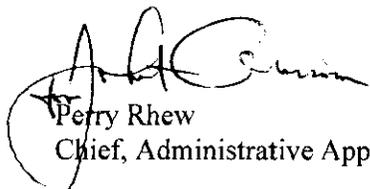


INSTRUCTIONS:

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 a fee of \$585. 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,


Petry 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) 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 of the United States and, therefore, ineligible to be a nonimmigrant. The director also noted that the petitioner is inadmissible to the United States pursuant to sections 212(a)(10)(D)(unlawful voter), 212(a)(6)(c)(ii) (false claim to U.S. citizenship), and 212(a)(6)(A)(i) (entered without inspection) of the Act. On appeal, counsel submits a brief and copies of: a blank Form I-508, Waiver of Rights, Privileges, Exemptions and Immunities; and a blank Form I-407, Abandonment of Lawful Permanent Resident Status.

Applicable Law

Section 101(a)(15)(U) of the Act, provides, in pertinent part, 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;

The record in this case provides the following pertinent facts and procedural history: The petitioner is a native and citizen of Guatemala. On January 24, 2004, the petitioner adjusted her status to that of a lawful permanent resident based upon an approved I-360 Violence Against Women Act self-petition. On January 4, 2007, the petitioner filed a Form N-400, Application for Naturalization, which was denied on July 12, 2007 because she registered to vote and voted in an election in 2002. On the same day, the petitioner was served with a notice to appear for removal proceedings before the immigration court. The petitioner's next hearing before the immigration court is scheduled for October 7, 2010.

The petitioner filed the Form I-918 U petition on July 20, 2009, and the Form I-192, Application for Advance Permission to Enter as Nonimmigrant, on September 11, 2009. On April 12, 2010, the director denied the Form I-918 U petition, noting the petitioner's ineligibility for nonimmigrant classification because of her status as a lawful permanent resident. 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. Based upon the petitioner's present status as a lawful permanent resident, the director found the petitioner inadmissible to the United States as a nonimmigrant. He also noted the petitioner's inadmissibility under sections 212(a)(10)(D), 212(a)(6)(c)(ii), and 212(a)(6)(A)(i) of the Act.

On appeal, counsel states that neither section 101(a)(15)(U) nor the regulations at 8 C.F.R. § 214.14 preclude a lawful permanent resident from seeking U nonimmigrant status. She states that U.S. Citizenship and Immigration Services (USCIS) should have afforded the petitioner an opportunity to relinquish her lawful permanent resident status so that she could be granted U nonimmigrant status rather than simply denying the Form I-918 U petition. Counsel notes that other processes exist whereby an alien may relinquish lawful permanent resident status for nonimmigrant status, and points to the regulations at 8 C.F.R. § 247, as well as the Form I-407, Abandonment of Lawful Permanent Residence Status, which permits lawful permanent residents to relinquish their status before a consular or immigration officer. Counsel contends that, prior to denying the petitioner's Form I-918 U petition, the director should have created a procedure to allow the petitioner to relinquish her lawful permanent residence status in exchange for U nonimmigrant classification. Counsel does not address the director's other findings of the petitioner's inadmissibility under sections 212(a)(10)(D), 212(a)(6)(c)(ii), and 212(a)(6)(A)(i) of the Act.

Upon review of the record, we concur with the director's decision to deny the petition. Pursuant to section 214(p)(5) of the Act, an alien seeking U nonimmigrant status may apply for any other immigration benefit or status for which he or she may be eligible. However, USCIS will only grant one immigrant or nonimmigrant status at a time. *See* 72 Fed. Reg. 179, 53014-53042, 53018 (Sept. 17, 2007). As the petitioner was already a lawful permanent resident of the United States at the time she filed her Form I-918 U petition, she was ineligible for U nonimmigrant status. 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.

We find no merit to counsel's arguments regarding the director's decision to deny the petition without first affording the petitioner an opportunity to relinquish her lawful permanent resident status. The regulations at 8 C.F.R. § 247, to which counsel refers in her brief, detail a process for a lawful permanent resident, who is appointed to a position which entitles him or her to diplomatic immunity, to either waive such immunity (by completing and submitting a Form I-508 (and I-508 F, if applicable)) or have his or her status adjusted to that of a nonimmigrant under section 247 of the Act. The existence of such regulations does not entitle a lawful permanent resident who is seeking a nonimmigrant

classification not specified at section 247 of the Act to be afforded a similar process. Furthermore, the U nonimmigrant regulations at 8 C.F.R. § 214.14 do not require USCIS to notify a petitioner that it intends to deny the petition because of the petitioner's status as a lawful permanent resident, or to provide the petitioner with an opportunity to submit a Form I-407 before a decision is rendered on the Form I-918 U petition. Accordingly, the director did not commit an error when denying the petitioner's U nonimmigrant petition, as she was, and continues to be, a lawful permanent resident of the United States.¹

As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. 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.

ORDER: The appeal is dismissed.

¹ We note that the director also found the petitioner inadmissible to the United States under sections 212(a)(10)(D), 212(a)(6)(c)(ii), and 212(a)(6)(A)(i) of the Act, and that counsel does not address these grounds of inadmissibility on appeal. We concur with the director that these particular grounds of inadmissibility exist in the present matter and would be bases for denying the petition unless they were waived. 8 C.F.R §§ 212.17, 214.14(c)(2)(iv).