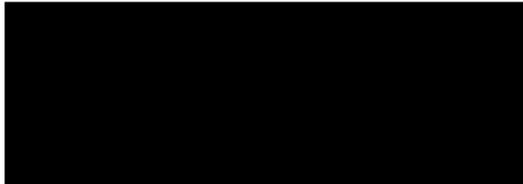


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



D14

DATE: DEC 20 2011 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:

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 \$630. 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 (the director), 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 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.

Applicable Law

Section 101(a)(15)(U) of the Act provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

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.

Pertinent Facts and Procedural History

The petitioner is a native and citizen of the Dominican Republic who entered the United States on June 20, 1974 as a lawful permanent resident (LPR). Removal proceedings were initiated against the petitioner in May 2008 due to her criminal convictions in the State of New York. On January 7, 2010, an immigration judge administratively closed removal proceedings against the petitioner so that she could pursue a U nonimmigrant visa petition (Form I-918 U petition) before USCIS.

The petitioner filed the Form I-918 U petition on November 18, 2009 as well as the Application for Advance Permission to Enter as Nonimmigrant (Form I-192 waiver). On September 10, 2010, the director issued a Request for Evidence (RFE) in relation to the Form I-192 because of the petitioner’s criminal convictions. The petitioner responded to the RFE with additional evidence, which the director found did not establish her eligibility for an approved Form I-192, and the director denied the Form I-192 accordingly. The director also denied the Form I-918 U petition on the bases of the petitioner’s denied Form I-192 as well as her status as an LPR.

On appeal, counsel states that the regulation at 8 C.F.R. § 214.14(b) does not contain, as an eligibility criterion, a requirement for a petitioner to be nonimmigrant. Counsel states that the petitioner has met the eligibility criteria at 8 C.F.R. § 214.14(b) and her petition should be granted on that basis. Regarding the petitioner’s status as an LPR, counsel states that there has already been a determination

that the petitioner is ineligible to maintain her LPR status in that there has been a finding of removability by an immigration judge. Counsel asserts on appeal that the petitioner is eligible for U nonimmigrant status because an immigration judge found her *prima facie* eligible for the classification and he sustained the charges of removability against her. Counsel does not address the director's determinations regarding the petitioner's inadmissibility.

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4). Upon review of the record, we concur with the director's decision to deny the petition.

In his denial decision regarding the Form I-918 U petition, the director acknowledged that the petitioner had met the eligibility criteria at 8 C.F.R. § 214.14(b), but determined that the petitioner was not admissible as a nonimmigrant while remaining an LPR, and was also inadmissible due to her denied Form I-192.

For aliens 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 a Form I-192 application in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.¹ The director found the petitioner inadmissible to the United States under two different sections of the Act: as a nonimmigrant who is not in possession of a valid passport under section 212(a)(7)(B)(i)(I) of the Act; and as an alien who has been convicted of a crime involving moral turpitude (CIMT) under section 212(a)(2)(A)(i)(I) of the Act. Although we concur with the director's inadmissibility finding under section 212(a)(2)(A)(i)(I) of the Act based upon the petitioner's assault convictions in the State of New York,² we withdraw his inadmissibility finding under section 212(a)(7)(B)(i)(I) of the Act. The alien, as an LPR, is not a nonimmigrant and therefore, would not be inadmissible for her failure to possess a valid passport.

¹ The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of a decision to deny a waiver." As the AAO does not have jurisdiction to review whether the director properly denied the Form I-192 application, the only issue before the AAO is whether the director was correct in finding the petitioner to be inadmissible and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

² The petitioner was convicted of assault in the third degree on two separate occasions and of assault in the second degree in August 2007, for which she was given a two-year prison term. New York Supreme Court, [REDACTED] The petitioner's conviction for assault in the second degree under N.Y. Penal Law § 120.05(2) is a crime involving moral turpitude. *See Matter of Medina*, 15 I&N Dec. 611, 614 (BIA 1976) (stating "assault with a deadly weapon is generally deemed to be a crime involving moral turpitude.").

In addition, as an LPR, the petitioner is ineligible for U nonimmigrant classification. The record contains no evidence that the petitioner has lost her lawful permanent resident status. Although she was placed in removal proceedings due to her criminal convictions, those proceedings were administratively closed without an order of removal. Lawful permanent resident status terminates upon entry of a final administrative order of removal. 8 C.F.R. § 1.1(p), 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, the proceedings against the petitioner were administratively closed without entry of a final administrative order of removal. Lawful permanent residency may also be lost through abandonment, rescission, or relinquishment. *See id.* at 327 n.1. However, none of those circumstances exist in this case. Consequently, the petitioner remains a lawful permanent resident.

Additionally, the immigration judge's finding regarding the petitioner's *prima facie* eligibility for U nonimmigrant status is not binding on USCIS's determination in this matter, as USCIS has sole jurisdiction over all U nonimmigrant petitions. 8 C.F.R. § 214.14(c)(1).

Conclusion

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. 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (noting that eligibility must be established at the time of filing the visa petition). In addition, even if the petitioner's LPR status was not disqualifying, she would be ineligible for an approved Form I-918 U petition because the director, in denying her Form I-192, did not waive her ground of inadmissibility.

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. The petition remains denied.