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

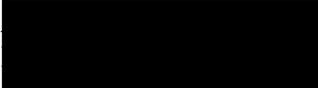
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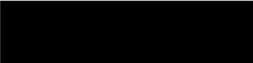


**U.S. Citizenship
and Immigration
Services**



814

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:

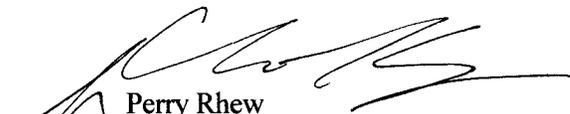


INSTRUCTIONS:

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, denied the 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)(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.

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 214(p) of the Act, 8 U.S.C. § 1184(p), provides that a petition for U nonimmigrant classification must contain a law enforcement certification. Specifically, the petitioner must provide:

a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

The regulation at 8 C.F.R. § 214.14(a)(12) defines the term *U nonimmigrant status certification* as a Form I-918, Supplement B, "U Nonimmigrant Status Certification" that confirms that the petitioner has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

Additionally, section 101(a)(15) of the Act, 8 U.S.C. § 1101(a)(15), 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.

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, 8 U.S.C. § 1184(p)(4).

Factual and Procedural History

The petitioner is a native and citizen of Colombia who was admitted to the United States on September 27, 1992 as a lawful permanent resident (LPR). On September 15, 1997, the petitioner was convicted

of money laundering in violation of Title 18, section 1956(h) of the U.S. Code (U.S.C.), and was sentenced to a prison term of 12 months and one day.¹ The petitioner was placed into removal proceedings in 1999, and an immigration judge administratively closed her proceedings in 2010. In May 2005, the petitioner filed a request for U nonimmigrant status and interim relief pending the publication of regulations implementing the U classification, which U.S. Citizenship and Immigration Services (USCIS) denied on September 1, 2005. The petitioner filed the instant Form I-918 U petition on November 7, 2007. On March 26, 2009, the director issued a Request for Evidence (RFE), seeking a properly completed law enforcement certification (Form I-918 Supplement B). The director initially denied the petition for abandonment in December 2009 because the petitioner failed to respond to the RFE; however, upon further review of the record, the director reopened his decision, reviewed the evidence that the petitioner had timely submitted in response to the RFE, and again denied the petition on March 28, 2011. The director determined that the petitioner failed to submit the Form I-918 Supplement B required at section 214(p)(1) of the Act, and as an LPR, the petitioner was ineligible for U nonimmigrant status.

On appeal, counsel states that section 214(p)(1) of the Act does not specify the form that the law enforcement certification must take, and that she provided a certification from federal authorities, in the form of a “5K1 letter,”² that established her helpfulness in the investigation or prosecution of qualifying criminal activity. Regarding the petitioner’s status as an LPR, counsel states that although the petitioner may be deemed an LPR until there is a final order of removal, she has lost her LPR status in fact because the petitioner’s alien registration card (Form I-551) was confiscated.

Analysis

Although section 214(p)(1) does not specify the form that a law enforcement certification must take, the regulation at 8 C.F.R. § 214.14(a)(12) provides that a law enforcement certification must be Form I-918 Supplement B, “U Nonimmigrant Status Certification.” Thus, the “5K1 letter” that the petitioner has submitted may not be accepted in lieu of the law enforcement certification required by the statute and regulations. We recognize the difficulties that a petitioner may face in obtaining a law enforcement certification; however, USCIS lacks the authority to waive the statutory requirement for the certification at section 214(p)(1) of the Act. As the petitioner has failed to submit the certification required by section 214(p)(1) of the Act, she has not overcome this portion of the director’s denial decision and cannot meet any of the eligibility criteria for U nonimmigrant classification under subsections 101(a)(15)(U)(i)(I)-(IV) of the Act.

Even if the petitioner had been able to secure a properly completed Form I-918 Supplement B, her status as an LPR renders her ineligible to be granted U nonimmigrant status. The confiscation of the alien’s Form I-551 did not alter her status as an LPR, as the Form I-551 is only a form of

¹ U.S. District Court, District of New Jersey, Case No. 97-156(4).

² According to counsel, the “5K1 letter” was written in 1998 by the Assistant U.S. Attorney to the U.S. District Judge pursuant to section 5K1.1 of the sentencing guidelines for the purpose of reducing the petitioner’s sentence after her money laundering conviction.

documentation of such status. Although the petitioner was placed in removal proceedings due to her criminal conviction, those proceedings were administratively closed in 2010 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. 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. As the petitioner was an LPR at the time she filed the Form I-918 U petition, she would have been ineligible to be granted U nonimmigrant status, even if she had submitted a properly executed law enforcement certification. *See* 8 C.F.R. § 103.2(b)(1), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (eligibility must be established at the time of filing the visa petition).

Conclusion

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.