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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

**PUBLIC COPY**



D14

Date: JUL 28 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,

Jerry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the U nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is again before the AAO on a motion to reconsider. The motion will be granted. The AAO's previous decision will be affirmed and the appeal will remain 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.

*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;

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*Facts and Procedural History*

As our prior decision set forth the pertinent facts and procedural history, we shall repeat only certain facts as necessary here. The petitioner is a native and citizen of Guatemala who adjusted her status to that of a lawful permanent resident January 24, 2004. 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 July 22, 2013.

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.

In our appellate decision, we concurred with the director's decision to deny the petition, citing section 214(p)(5) of the Act, as well as the preamble to the U nonimmigrant visa rule (72 Fed. Reg. 179, 53014, 53018 (Sept. 17, 2007)). We determined that because 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. We recognized the director's citation in his denial decision to section 101(a)(15) of the Act, which defines the term "immigrant" as every alien except certain nonimmigrants, including those who hold U nonimmigrant status. We also concurred with the director's determination 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, and noted that counsel had not addressed these grounds of inadmissibility on appeal.

On motion, counsel states that the AAO's reliance on *Matter of A* is misplaced because the petitioner is not attempting to hold both lawful permanent resident status and U nonimmigrant status at the same time. According to counsel, the petitioner is seeking to forfeit her lawful permanent resident status and U.S. Citizenship and Immigration Services (USCIS) has an obligation to devise a procedure whereby the petitioner can relinquish her status as a lawful permanent resident. Counsel states further that section 214(p)(5) of the Act is inapplicable to the matter at hand because the statute says nothing about limiting the ability of individuals who qualify for U nonimmigrant status from seeking another immigration benefit for which the alien may be eligible and the petitioner desires to end her status as a lawful permanent residence in exchange for U nonimmigrant status. Counsel also objects to the AAO's reference to the grounds under which the director noted that the petitioner was inadmissible to the United States. Counsel states that the petitioner's grounds of inadmissibility should not be considered in this motion.

On the Form I-290B, Notice of Appeal or Motion, counsel stated that she would submit a brief in conjunction with the motion within 30 days, or by November 29, 2010. The record as it is presently constituted does not include any supplemental brief. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reconsider. The brief must be submitted with the motion. *See* 8 C.F.R § 103.5(a)(3).

#### *Analysis*

Counsel has not presented any arguments or evidence to establish that our previous decision was

incorrect. The petitioner is a lawful permanent resident and is ineligible for U nonimmigrant classification. 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.

The record contains no evidence that the petitioner has lost her lawful permanent resident status. Although she was placed in removal proceedings, those proceedings have not yet concluded with 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)). Consequently, the petitioner remains a lawful permanent resident.

Counsel states that USCIS has an obligation to devise a process by which an alien can relinquish his or her lawful permanent resident status in exchange for a grant of U nonimmigrant status. We note that in addition to a final order of removal, lawful permanent residency may also be lost through abandonment, rescission, or relinquishment. *See Matter of Gunaydin*, 18 I&N Dec. at 327 n.1. None of those circumstances exist in this case, and counsel does not point to any statute, regulation, or other legal authority to support her claim that USCIS is obligated to devise a process for an alien to relinquish lawful permanent resident status once a U petition is filed. Nor will USCIS hold the adjudication of a U petition in abeyance pending a resolution on an alien's pursuit to terminate her status as lawful permanent resident. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1).

Regarding counsel's statement concerning the inappropriateness of the AAO's reference to the petitioner's inadmissibility, we note that we simply concurred with a stated basis of denial from the director's decision, noting that counsel had not addressed the director's findings on appeal. Under 8 C.F.R. § 212.17(b)(3) the AAO does not have jurisdiction to review the denial of a waiver of inadmissibility; however, the AAO does have jurisdiction to review the director's inadmissibility finding to determine whether or not an alien is actually inadmissible and requires a waiver. All nonimmigrants, including U nonimmigrants, must establish that they are admissible to the United States or that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). Thus, the AAO properly reviewed the director's inadmissibility determination (but not his denial of the waiver request).

### *Conclusion*

As the petitioner remains a lawful permanent resident of the United States, she is ineligible for U nonimmigrant status. On motion, the petitioner has failed to overcome the ground upon which we dismissed her appeal. 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.

**ORDER:** The AAO's prior decision, dated September 29, 2010, is affirmed. The appeal remains dismissed and the petition remains denied.