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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: JUN 22 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:



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 U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and 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.

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)(2)(A)(i)(I) (commission of a crime of moral turpitude), 212(a)(2)(A)(i)(II) (controlled substance violation), and 212(a)(2)(C) (controlled substance trafficker) of the Act. On appeal, counsel submits: a brief statement; a copy of an April 29, 2009 letter to U.S. Citizenship and Immigration Services (USCIS) regarding the petitioner's removal proceedings; a July 10, 2009 order of an immigration judge terminating removal proceedings against the petitioner; a January 21, 2010 letter from a Forensic Social Worker at The Legal Aid Society's Defender Services Program; and a Certificate of Participation, dated December 16, 2008, for the petitioner's participation in a 12-week New Beginnings Group.

#### *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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#### *Pertinent Facts and Procedural History*

The petitioner is a native and citizen of Jamaica, who entered the United States on January 21, 1970 as a lawful permanent resident. Removal proceedings were initiated against the petitioner on February 5, 2008 due to her criminal convictions in the State of New York. On July 10, 2009, an immigration

judge terminated 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 13, 2008 as well as the Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192 waiver). On July 31, 2009, the director issued a Notice of Intent to Deny (NOID) the petition because, as a lawful permanent resident, the petitioner was ineligible for nonimmigrant U classification. The director also noted that the petitioner's criminal convictions rendered her inadmissible to the United States and she required a waiver. The petitioner responded to the NOID with additional evidence, which the director found did not establish her eligibility for U nonimmigrant status and he denied the petition accordingly. In his denial decision, the director cited *Matter of A*, 6 I&N Dec. 651 (BIA 1955) and determined that the petitioner could not be granted U nonimmigrant status because she still held lawful permanent resident status and could not simultaneously be an immigrant and nonimmigrant. The director noted further that even if the petitioner was not a lawful permanent resident, she was inadmissible under sections 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II), and 212(a)(2)(C) of the Act.

On appeal, counsel states that the petitioner is "no longer legally eligible to maintain her lawful permanent resident status." According to counsel, on or about June 18, 2009, an immigration judge "sustained the charges of removability against the petitioner . . . finding that the petitioner was no longer eligible to maintain her lawful permanent residence status . . ." Counsel submits a copy of an April 29, 2009 letter that she sent to the Vermont Service Center to notify the director of the immigration judge's decision, as well as the July 10, 2009 Order of the Immigration Judge that terminated proceedings against the petitioner because she was found *prima facie* eligible for U nonimmigrant status. 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*

Upon review of the record, we concur with the director's decision to deny the petition. The petitioner is a lawful permanent resident and is ineligible for U nonimmigrant classification. 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.

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 terminated 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 terminated 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.

The statute and regulations also do not permit a lawful permanent resident to adjust status to that of a U nonimmigrant. The Act allows an alien to change from one nonimmigrant classification to another and permits lawful permanent residents to adjust to A, E and G nonimmigrant classification, but the Act contains no provision for the adjustment of a lawful permanent resident to U nonimmigrant status. *See* sections 247, 248 of the Act, 8 U.S.C. §§ 1257, 1258.

Finally, 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), 103.3(c).

As the petitioner remains a lawful permanent resident of the United States, she is ineligible for U nonimmigrant status. The petitioner has failed to overcome the ground for denial on appeal.<sup>1</sup>

### *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.

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<sup>1</sup> Counsel does not address the director's determination that the petitioner is inadmissible to the United States under sections 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II), and 212(a)(2)(C) of the Act. We concur with the director's inadmissibility determination and note that unless waived, the petitioner's inadmissibility would provide another ground for denial of the petition. 8 C.F.R §§ 212.17, 214.14(c)(2)(iv).