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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: OCT 18 2011

Office: VERMONT SERVICE CENTER

FILE:



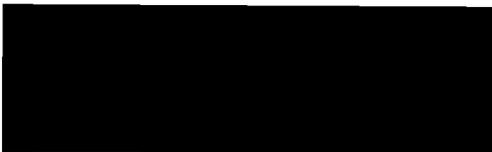
IN RE:

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 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.

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)(7)(A)(i)(I)(immigrant without documents – no valid passport) and 212(a)(2)(A)(i)(II) (controlled substance violation – two counts) of the Act. On appeal, counsel submits a brief and a Form I-407, Abandonment of Lawful Permanent Resident Status, signed by the petitioner on October 18, 2010.

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;

Facts and Procedural History

The petitioner is a native and citizen of [REDACTED]. On December 1, 1990, the petitioner adjusted her status to that of a lawful permanent resident pursuant to section 210 of the Act. The petitioner was placed in removal proceedings and was granted cancellation of removal on June 22, 2007. On April 24, 2009, the petitioner was placed back in removal proceedings for having been convicted of a violation of any law or regulation relating to a controlled substance at any time after admission. The petitioner filed the Form I-918 U petition on August 24, 2009, and the Form I-192, Application for

Advance Permission to Enter as Nonimmigrant, on the same date. On August 19, 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 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)(7)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Act.

On appeal, counsel asserts that no provision in the Act or the regulations prohibit a lawful permanent resident from applying to adjust status to that of a "U" nonimmigrant under section 101(a)(15)(U) of the Act or the regulations at 8 C.F.R. § 214.14. Counsel contends that United States Citizenship and Immigration Services (USCIS) should have issued a contingent approval of the "U" petition and allowed the petitioner an opportunity to relinquish her lawful permanent resident status, rather than denying the "U" petition outright. 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. Counsel does not address the director's other findings regarding the petitioner's inadmissibility under sections 212(a)(7)(A)(i)(I) and 212(a)(2)(A)(i)(II) 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, U.S. Citizenship and Immigration Services (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 (BIA 1971)(noting that eligibility must be established at the time of filing the visa petition). 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 his 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 an application to abandon lawful permanent resident status (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.¹

We note that USCIS records reflect that on December 6, 2010, after the director issued his decision, the petitioner was ordered removed from the United States, a subsequent appeal of the immigration judge's order was dismissed on May 23, 2011 and the petitioner's lawful permanent residency was thereby terminated.² Nevertheless, at the time this petition was filed, the petitioner was ineligible for U nonimmigrant classification because she was a lawful permanent resident. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(1), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). This decision is issued, however, without prejudice to the filing of a new Form I-918 U petition and Form I-192 waiver of inadmissibility with USCIS based on the petitioner's present circumstances.

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 will remain denied.

¹ The record does not reveal that the Form I-407 submitted on appeal was ever properly filed. We note that the director also found the petitioner inadmissible to the United States under sections 212(a)(7)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Act, and that counsel does not address these grounds of inadmissibility on appeal. We also 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).

² 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)).