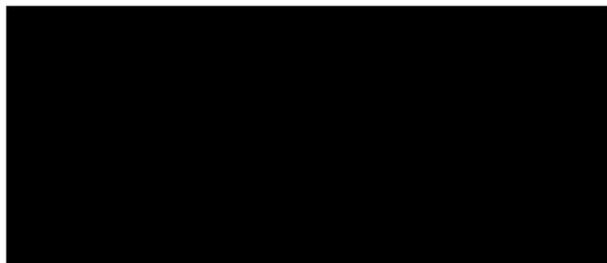




U.S. Citizenship
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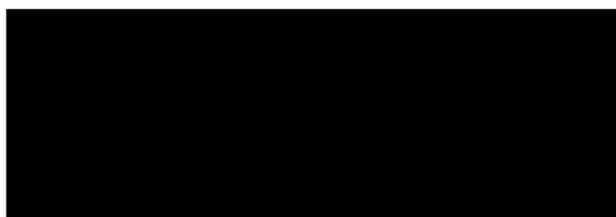
D14

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 Petition for U Nonimmigrant Status (Form I-918 U 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 was a lawful permanent resident of the United States and, therefore, ineligible to be a nonimmigrant. *See Director's Decision*, dated August 13, 2010. On appeal, counsel submits a brief and additional evidence.¹

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 [REDACTED] who entered the United States as a lawful permanent resident on August 18, 1995. On October 6, 2009, the petitioner was placed into removal proceedings before the Baltimore Immigration Court for having been convicted of an aggravated felony. The petitioner filed the Form I-918 U petition on April 12, 2010, and the Form I-192,

¹ On appeal, the petitioner submits through counsel evidence regarding the petitioner's efforts to rehabilitate herself in light of her criminal history. The AAO does not have jurisdiction to consider evidence relating to a waiver of inadmissibility (Form I-192). 8 C.F.R. § 212.17(b)(3). We shall therefore not discuss this evidence in our decision.

Application for Advance Permission to Enter as Nonimmigrant, on the same date. On August 13, 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. The director noted further that 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.

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 neither the statute nor the regulations contain any provision whereby an individual is prohibited from being a nonimmigrant once immigrant status has been relinquished. Counsel notes that other processes exist whereby an alien may relinquish lawful permanent resident status for nonimmigrant status under section 101(a)(15)(A), (E) and (G) of the Act, and that immigrants may also complete an application to relinquish lawful permanent resident status (Form I-407). Counsel also states that by not allowing the petitioner to voluntarily relinquish her permanent resident status, her immediate family members cannot become nonimmigrants, which subverts Congress's intent for enacting the U nonimmigrant visa legislation.

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. In the brief, counsel refers to 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 provide the petitioner with

an opportunity to submit a Form I-407 before a decision is rendered on the Form I-918 U petition. Counsel is correct in stating that once lawful permanent resident status is relinquished, an individual may seek a nonimmigrant status; however, that is not the case here as the petitioner was a lawful permanent resident when she filed the petition. 8 C.F.R. § 103.2(b)(1).

Counsel argues that the U nonimmigrant visa category was enacted to protect both the victim and her immediate family members, and by not allowing a petitioner to relinquish her lawful permanent resident status, her immediate family members remain unprotected, which subverts the intent of Congress for enacting the U nonimmigrant visa legislation. Counsel cites no portion of the statute or legislative history to support this assertion.

USCIS records reflect that on January 31, 2011, after the petition was filed and the director issued his decision, the petitioner was ordered removed from the United States and her lawful permanent residency was thereby terminated.² Nevertheless, the petitioner was ineligible at the time this petition was filed. 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). However, this decision is issued 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.

²Lawful 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)).