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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



U.S. Citizenship  
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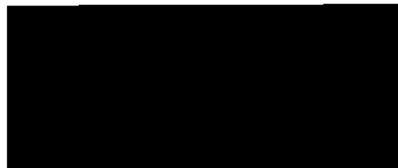
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Date: **SEP 11 2012** Office: VERMONT SERVICE CENTER FILE:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 of the Vermont Service Center (the director) 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.

#### *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, as well as the victims' qualifying family members. 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.

#### *Factual and Procedural History*

The petitioner is a native and citizen of Mexico who was granted lawful permanent resident (LPR) status on March 25, 2004. In February 2010, the petitioner was placed into removal proceedings<sup>1</sup> pursuant to section 237(a)(2)(A)(i) of the Act, 8 U.S.C. § 1227(a)(2)(A)(i), based upon her conviction in the State of Colorado for Fraud and Misuse of Permits and Other Documents in violation of 18 U.S.C. § 1546(a).<sup>2</sup>

The petitioner filed the instant U nonimmigrant petition on November 22, 2011,<sup>3</sup> which the director ultimately denied because the petitioner was in lawful permanent resident status. Although the petitioner had executed and submitted an Application to Relinquish Lawful Permanent Resident Status (Form I-407) along with the Form I-918 U petition, the director stated that such a form may only be filed at a U.S. embassy or consulate overseas and therefore viewed the Form I-407 as "a supporting document." 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 also noted that the definition of "immigrant" at section 101(a)(15) of the Act does not include an alien described at section 101(a)(15)(U) of the Act.

On appeal, counsel asserts that the director failed to provide any legal basis for concluding that a Form I-407 may not be filed with a domestic U.S. Citizenship and Immigration Services (USCIS) office. According to counsel, Chapter 22.4 of the USCIS Adjudicators' Field Manual (AFM), which relates to the Immigrant Investor (EB-5) Program, allows for the filing of a Form I-407 with

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<sup>1</sup> The petitioner is scheduled to appear before the Denver, Colorado Immigration Court on September 19, 2012.

<sup>2</sup> United States District Court, District of Colorado, Case No. [REDACTED]

<sup>3</sup> The petitioner had previously filed a U nonimmigrant petition [REDACTED] in January 2011, which the director denied. The AAO dismissed the petitioner's subsequent appeal.

a USCIS domestic office along with an application to adjust status (Form I-485). Counsel states further that the director's decision, which departs from current agency practice regarding the ability to file a Form I-407 with a domestic USCIS office, violates the Administrative Procedures Act (APA).

### *Analysis*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the record, we concur with the director's decision to deny the petition.

Lawful permanent residency ceases upon the entry of a final administrative order removing an alien from the United States, or through abandonment, rescission, or relinquishment. *See Matter of Gunaydin* 18 I&N Dec. 326, 327 n.1 (BIA 1982). The petitioner executed a Form I-407, Abandonment of Lawful Permanent Resident Status, on November 15, 2011, indicating at Part 6(a) that she was abandoning her LPR status because: "I wish to have my petition for U nonimmigrant status adjudicated and approved." However, the petitioner's execution of the Form I-407 while in the United States in the custody of U.S. Immigration and Customs Enforcement (USICE) is not an abandonment of her LPR status. The Form I-407 is an internal USCIS document used by consular and immigration officers abroad to ensure that an alien has voluntarily abandoned LPR status and has been informed of his or her right to a hearing before an Immigration Judge if the alien is an applicant for admission to the United States. *See Form I-407 Instructions*. The Form I-407 in the record contains no indication that it was executed by the applicant in the presence of a consular or USCIS immigration officer. The entire portion of the Form I-407 marked "For Government Use Only" is blank. USCIS regulations at 8 C.F.R. § 103.2(a)(1) require that every benefit request or other document submitted to the agency "be executed and filed in accordance with the form instructions." The record lacks any evidence that the petitioner's Form I-407 was executed and filed with a consular or USCIS officer.

Regardless of the validity of the petitioner's incomplete Form I-407, counsel cites no legal authority for the petitioner to voluntarily abandon or relinquish her LPR status in order to seek U nonimmigrant classification. While section 247 of the Act, 8 U.S.C. § 1257, allows an alien to voluntarily abandon her status as a lawful permanent resident and adjust to an A, E, or G nonimmigrant classification, the Act and the regulations contain no provision for the adjustment of a lawful permanent resident to U nonimmigrant status.

Counsel's assertions regarding the director's alleged violation of section 706(2)(A) of the Administrative Procedures Act (APA) are without merit. The AFM chapter to which counsel cites concerns the filing of a Form I-407 in certain limited circumstances relating to an EB-5 petitioner who was granted LPR status on a conditional basis and who seeks to obtain a new period of conditional resident status based upon a change in circumstances. The provisions of the AFM chapter to which counsel cites are not applicable to these proceedings, as the petitioner here is seeking to change from an immigrant to a nonimmigrant status.

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, 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 remains a lawful permanent resident and was at the time she filed the instant Form I-918 U petition, she is ineligible for U nonimmigrant status. 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

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. The dismissal of the appeal is without prejudice to the filing of a new Form I-918 U petition with a Form I-192 waiver application, should the petitioner's lawful permanent residency be terminated through a final administrative removal order.

**ORDER:** The appeal is dismissed. The petition remains denied.