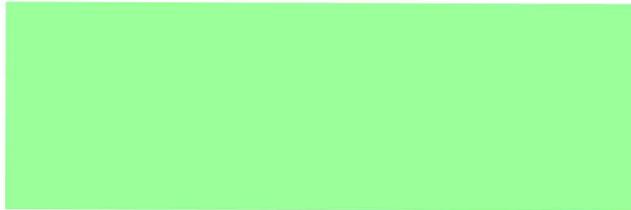


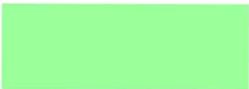


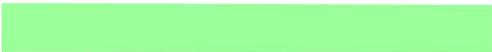
U.S. Citizenship
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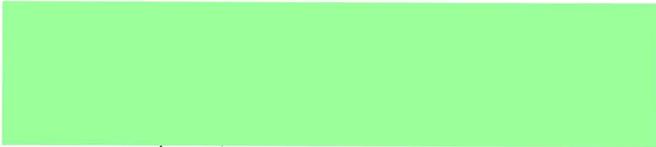
Date: **JUN 25 2013** Office: VERMONT SERVICE CENTER

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:

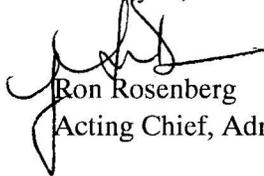


INSTRUCTIONS:

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 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 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be granted. The appeal will remain dismissed and the petition will remain denied.

The petitioner seeks nonimmigrant classification pursuant to 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 qualifying criminal activity.

The director denied the petition because he determined that the petitioner was a lawful permanent resident of the United States and, therefore, ineligible to be a nonimmigrant. *See Director's Decision*, dated April 11, 2011. The AAO affirmed the director's decision in its June 15, 2012 dismissal of the appeal. On motion, counsel submits a brief.

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

As the facts and procedural history have already been explained in the previous decisions, we will not repeat them in their entirety here, and the previous AAO decision dated June 15, 2012, is incorporated here by reference. The petitioner is a native and citizen of Honduras who on November 29, 2001 was admitted to the United States as a lawful permanent resident. The petitioner was placed into removal proceedings because she obtained her lawful permanent resident (LPR) status by fraud. Although the immigration judge found the petitioner removable because she

had obtained her LPR status by fraud, removal proceedings against the petitioner were administratively closed in 2003 without entry of a final administrative removal order.

The petitioner filed the Form I-918 U petition and the Form I-192, Application for Advance Permission to Enter as Nonimmigrant, on March 17, 2008. On April 11, 2011, 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 stated that an alien may not be both an immigrant and a nonimmigrant at the same time. *See Matter of A*, 6 I&N Dec. 651 (BIA 1995). 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. The AAO upheld the director's decision and found that lawful permanent resident status terminates upon the entry of a final administrative order of removal, and therefore the petitioner remained a lawful permanent resident. The AAO also found no merit to counsel's arguments regarding the applicability of *Matter of Koloamatangi* to the instant matter, as that case involved an alien seeking cancellation of removal under section 240A of the Act, 8 U.S.C. § 1229b.¹

Analysis

As stated in the prior AAO decision, 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), and 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). Furthermore, lawful permanent resident status terminates upon entry of a final administrative order of removal. 8 C.F.R. §§ 1.2, 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)).

The record still contains no evidence that the petitioner has lost her lawful permanent resident status. In her brief, counsel asserts that because the petitioner's LPR status was fraudulently obtained, she is not considered to have been "lawfully admitted," and cites to various cases to support this argument. However, each of the cases counsel cites are inapplicable to the present case because they arose in the context of individuals seeking a waiver under section 212(c) of the Act, and do not pertain to or change the holding in *Matter of Gunaydin* that 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. 18 I&N Dec. at

¹ In her brief, counsel asserts that the AAO dismissed the petitioner's argument regarding *Matter of Koloamatangi* because "the case law was developed within the context of removal proceedings." Petitioner's Brief on Motion at 5. However, counsel misreads the AAO decision. The AAO found *Koloamatangi* inapplicable, not because the petitioner was in removal proceedings, but because *Koloamatangi* concerned a lawful permanent resident's eligibility to seek cancellation of removal under section 240A of the Act. It did not address the issue of when an alien's lawful permanent resident status terminates.

328. Counsel also contends that *Gunaydin* is inapplicable to the case at bar because the facts deal with individuals who committed a deportable offense after the granting of status. See Petitioner's Brief on Motion at 7. However, the timing of the removable offense is not at issue in *Matter of Gunaydin*, and while the facts differ from those in this case, the holding, that lawful permanent residency ends upon entry of a final administrative order of removability, remains the same. Furthermore, the definition of *lawfully admitted for permanent residence* at 8 C.F.R. § 1.2 provides that lawful permanent residency "terminates upon entry of a final administrative order of exclusion, deportation, or removal."

Here, the proceedings against the petitioner were closed 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 and is ineligible for U nonimmigrant status. The petitioner has failed to overcome the ground for denial on motion.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The motion is granted. The AAO's prior decision, dated June 15, 2012, is affirmed. The petition remains denied.