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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



Date: **JUN 06 2014** 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), 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.

Applicable Law

An individual may qualify for U nonimmigrant classification as a victim of a qualifying crime under section 101(a)(15)(U)(i) of the Act if:

- (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[.]

See also 8 C.F.R. § 214.14(b) (discussing eligibility criteria). Domestic violence is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

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 regulation at 8 C.F.R. § 214.14(c)(4) prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by [U.S. Citizenship and Immigration Services (USCIS)]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be

bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

In addition, section 212(d)(14) of the Act requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion.

Section 212(a) of the Act sets forth the grounds of inadmissibility to the United States, and states, in pertinent part:

(2) Criminal and Related Grounds

(A) Conviction of Certain Crimes

(i) In General.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . .

* * *

is inadmissible.

Facts and Procedural History

The petitioner is a native and citizen of Honduras who adjusted her status to that of a lawful permanent resident on March 3, 2000. The petitioner filed the instant Form I-918 U petition and an Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on November 15, 2013. On February 5, 2014, the director found the petitioner did not establish her eligibility for U nonimmigrant status and denied the Form I-918 U petition accordingly. In her 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. On the same day, the director denied the Form I-192, determining that the petitioner was inadmissible under section 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude) of the Act. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition. On appeal, counsel indicated that a brief or other evidence would be submitted to the AAO within 30 days. However, as of the date of this decision, we have received no additional statements or evidence. On the Notice of Appeal (Form I-290B), counsel briefly discusses the procedural history of the case but provides no arguments in rebuttal to the director's stated reasons for the denying the petition.

Analysis

The record shows that the petitioner is currently a lawful permanent resident of the United States. 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).

The petitioner has been a lawful permanent resident of the United States since March 3, 2000. On November 15, 2012, a Notice to Appear was issued to the petitioner, placing her in removal proceedings, and she remains in removal proceedings before the Immigration Court in San Diego, California. Lawful permanent resident status terminates upon entry of a final administrative order of removal, and since the petitioner is still in removal proceedings and an order of removal has not been finalized, she remains an immigrant. 8 C.F.R. § 1.2 (*definition of lawfully admitted for permanent residence*). *See also* *Etuk v. Slattery*, 936 F.2d 1433, 1447 (2d Cir. 1991) (citing *Matter of Gunaydin*, 18 I&N Dec. 326 (BIA 1982)). Eligibility for a benefit request must be established at the time of petition filing, particularly for individuals seeking U nonimmigrant classification, who are subject to an annual cap on U-1 nonimmigrant status and are placed on a waiting list, by filing date of petition, if they cannot be granted such status due solely to the cap. *See* 8 C.F.R. §§ 103.2(b)(1), 214.14(d); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In addition, as noted by the director, 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.

Accordingly, the petitioner is ineligible for U nonimmigrant status because she is currently a lawful permanent resident. We note that on appeal, counsel has presented no arguments regarding the director’s determination regarding this issue.¹

Conclusion

The petitioner is a lawful permanent resident of the United States and she is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act and the appeal must be dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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

¹ The director also noted that the petitioner was inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, for being convicted of a crime involving moral turpitude. As the petitioner is ineligible for U nonimmigrant classification based upon her status as a permanent resident, we shall not address her inadmissibility to the United States.