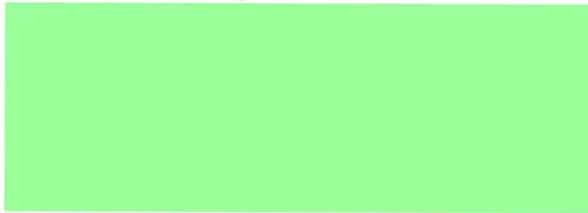


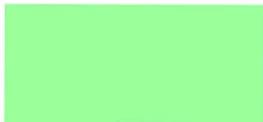
(b)(6)

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



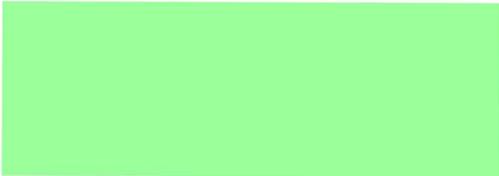
U.S. Citizenship  
and Immigration  
Services



Date: **MAY 07 2014** Office: VERMONT SERVICE CENTER FILE: 

IN RE: PETITIONER: 

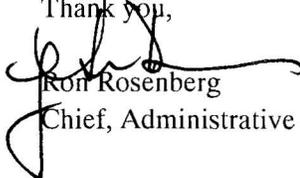
PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

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). Felonious assault 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.

Under section 214(p) of the Act, 8 U.S.C. § 1184(p), a petition for U nonimmigrant classification must contain a law enforcement certification. Specifically, the petitioner must provide:

a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). . . . This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

In addition, 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."

Further, 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, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance . . .

\* \* \*

is inadmissible.

\* \* \*

(B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years of more is inadmissible.

### *Facts and Procedural History*

The petitioner is a native and citizen of Bolivia who adjusted his status to that of a lawful permanent resident on June 27, 2003. The petitioner filed the instant Form I-918 U petition with an accompanying Application for Advance Permission to Enter as Nonimmigrant (Form I-192) on December 30, 2011. On October 23, 2012, the director issued a Request for Evidence (RFE) that the petitioner continued to be helpful in the investigation or prosecution of qualifying criminal activity and that he suffered substantial physical or mental abuse. In addition, the director noted that the petitioner was not admissible to the United States as a nonimmigrant because he was a lawful permanent resident of the United States. The petitioner responded with additional evidence. On September 10, 2013, the director found the petitioner did not establish his 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 he 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 sections 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude), 212(a)(2)(A)(i)(II) (controlled substance violations), 212(a)(2)(B) (multiple offenses, five year sentence), and 212(a)(6)(A)(i) (present without admission or parole) of the Act. On September 17, 2013, an immigration judge ordered the petitioner removed from the United States. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition.

### *Analysis*

#### Lawful Permanent Resident

On appeal, counsel contends that the petitioner is no longer a lawful permanent resident of the United States because he was ordered removed by an immigration judge. Moreover, he claims that since the petitioner was in removal proceedings, he was entitled to “greater procedural protections” and he did not have to establish eligibility at the time of filing for U nonimmigrant classification.

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).

When he filed the Form I-918 U petition in December 2011, the petitioner was a lawful permanent resident and such status did not terminate until September 2013 when he was ordered removed from the United States by an immigration judge. 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.

Counsel asserts that the petitioner’s due process rights were violated since he was not allowed to apply for all forms of relief for which he was eligible. The petitioner was not precluded from applying for U nonimmigrant status; rather, he failed to establish his eligibility for that form of relief. The statute and regulations do not permit a lawful permanent resident to adjust status to that of a U nonimmigrant. The Act allows an alien to change from one nonimmigrant classification to another and permits lawful permanent residents to adjust to A, E and G nonimmigrant classification, but the Act contains no provision for the adjustment of a lawful permanent resident to U nonimmigrant status. See sections 247, 248 of the Act, 8 U.S.C. §§ 1257, 1258. Counsel fails to demonstrate that the director’s decision denying the Form I-918 U petition was erroneous or that any resultant prejudice violated the petitioner’s right to due process. See *Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986) (an alien must demonstrate prejudice such as would constitute a due process violation); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975).

Accordingly, the petitioner is ineligible for U nonimmigrant status because he was a lawful permanent resident when he applied for such status in December 2011. We note, however, that even if the petitioner’s status as a lawful permanent resident had been terminated prior to the filing of his Form I-918 U petition, he would nevertheless be ineligible for U nonimmigrant status because he has failed to establish his helpfulness to law enforcement authorities in the investigation or prosecution of qualifying criminal activity and he is inadmissible to the United States and the grounds of inadmissibility have not been waived.

#### Helpfulness to Law Enforcement

The director denied the petitioner’s Form I-918 U petition because although the petitioner was statutorily eligible for U nonimmigrant status, he was inadmissible to the United States. However, to be eligible for U nonimmigrant classification, an alien must demonstrate, in part, that he has been helpful, is being helpful, or is likely to be helpful to the certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his petition is based. Section 101(a)(15)(U)(i)(III) of the Act; 8 C.F.R. § 214.14(b)(3).

The law enforcement certification (Form I-918 Supplement B) was signed by Assistant Chief [REDACTED] Texas Police Department (certifying official), on October 17, 2011. In Part 4.2, the certifying official indicated “No” to the question about whether the petitioner had been, is being or is likely to be helpful in the investigation and/or prosecution of the qualifying criminal activity, and further noted at Part 4.4 that the petitioner had unreasonably refused to provide assistance. The certifying official reported that the petitioner “did not follow up on his cases and did not provide police information requested to continue with the investigation.”

Section 214(p)(1) of the Act requires a petitioner to submit “a certification from a . . . local law enforcement official . . . investigating criminal activity described in section 101(a)(15)(U)(iii) [of the Act]. . . . that the alien ‘has been helpful, is being helpful, or is likely to be helpful’ in the investigation or prosecution of criminal

activity described in section 101(a)(15)(U)(iii).” Here, the Form I-918 Supplement B submitted by the petitioner does not include the certifying official’s endorsement of the petitioner’s helpfulness, and the certifying official also specified that the petitioner unreasonably refused to provide assistance in the criminal activity of which he was victim. While the director stated that the petitioner met the statutory eligibility criteria for U nonimmigrant status, the record does not support that finding. The petitioner’s Form I-918 U petition is not accompanied by the certification at section 214(p)(1) of the Act and the petitioner has not met the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act as prescribed by the regulation at 8 C.F.R. § 214.14(b)(3). Accordingly, that portion of the director’s decision is withdrawn.<sup>1</sup> Contrary of the director’s decision, the petitioner is statutorily ineligible for U nonimmigrant status.

### Inadmissibility

All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 8 C.F.R § 214.1(a)(3)(i). For aliens seeking U nonimmigrant status who are inadmissible to the United States, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility. The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: “There is no appeal of a decision to deny a waiver.” As the AAO does not have jurisdiction to review whether the director properly denied the Form I-192, the AAO does not consider whether approval of the Form I-192 should have been granted but whether the director was correct in finding the petitioner inadmissible to the United States and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

A full review of the record supports the director’s determination that the petitioner is inadmissible under sections 212(a)(2)(A)(i)(I) (conviction of a crime involving moral turpitude), 212(a)(2)(A)(i)(II) (controlled substance violations), and 212(a)(2)(B) (multiple offenses, five year sentence) of the Act.

The record shows that the petitioner was convicted of:

- robbery with bodily injury on September 2, 2008, for which he was sentenced to five years imprisonment; and
- possession of 1-4 grams of cocaine on March 2, 2010, for which he was sentenced to five years imprisonment.

The petitioner’s conviction for robbery is a conviction for a crime involving moral turpitude. *See Matter of Martin*, 18 I&N Dec. 226, 227 (BIA 1982) (robbery). Accordingly, the petitioner is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for being convicted of a crime involving moral turpitude. In addition, the criminal court documents in the record support the director’s determination that the petitioner is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violating any law relating

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<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003).

to a controlled substance as a result of his 2010 conviction. Further, based on his sentences of five years or more in confinement, the petitioner is inadmissible under section 212(a)(2)(B) of the Act.

The director also found the petitioner inadmissible under section 212(a)(6)(A)(i) (present without admission or parole) of the Act. However, the record establishes that the petitioner was admitted to the United States as a lawful permanent resident on June 27, 2003. Therefore, the petitioner is not inadmissible under section 212(a)(6)(A)(i) of the Act. This portion of the director's decision will be withdrawn.

*Conclusion*

The petitioner was a lawful permanent resident of the United States at the time he filed his Form I-918 U petition, and he did not submit the certification described at section 214(p)(1) of the Act or meet the helpfulness requirement of section 101(a)(15)(U)(i)(III) of the Act. Further, the petitioner has not established that he is admissible to the United States or that his grounds of inadmissibility have been waived. He 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.