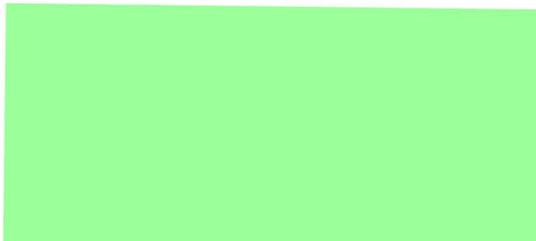


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAY 14 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.

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 –

* * *

(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.

* * *

(C) Controlled Substance Traffickers.-Any alien who the consular officer or the Attorney General knows or has reason to believe –

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical . . . or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so . . .

* * *

is inadmissible.

Facts and Procedural History

The petitioner is a native and citizen of Mexico who adjusted his status to that of a lawful permanent resident on November 17, 2000. The petitioner filed the instant Form I-918 U petition with an accompanying law enforcement certification (Form I-918 Supplement B) on February 6, 2012. On May 23, 2012, the director issued a Request for Evidence (RFE) that the petitioner was helpful in the investigation or prosecution of qualifying criminal activity and that he possessed information about qualifying criminal activity. In addition, the director noted that the petitioner was inadmissible to the United States, and he needed to submit a copy of his passport and a new Form I-918 Supplement B that indicated that he was the victim of qualifying criminal activity. The petitioner responded with additional evidence and a new Form I-918 Supplement B. On December 10, 2012, the director issued another RFE regarding his grounds of inadmissibility, and requested that the petitioner submit an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On March 22, 2013, the petitioner responded with additional evidence and a Form I-192. On August 27, 2013, the director found that the petitioner did not establish his eligibility for U nonimmigrant status and denied the Form I-918 U petition accordingly. Although the director determined that the petitioner was statutorily eligible for U nonimmigrant status, she denied the Form I-918 U petition because the petitioner was not admissible to the United States as a nonimmigrant because even though he is in removal proceedings, he remains a lawful permanent resident of the United States. In her 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)(II) (controlled substance violation) and 212(a)(2)(C) (controlled substance trafficker) 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 will be submitted within 30 days. However, as of the date of this decision, the AAO has received no additional statements or evidence.

Analysis

Lawful Permanent Resident

On appeal, counsel asserts that the director erred in relying on *Matter of A*- because it predates the enactment of the U visa rule. Moreover, she claims that holding lawful permanent resident status is not a ground of inadmissibility under section 212 of the Act, and the eligibility requirements under the U visa regulations do not exclude lawful permanent residents from applying for this form of relief.

Although *Matter of A*- predates the U visa rule, counsel does not identify any part of the regulations that supersedes or nullifies the intent of the Board of Immigration Appeals (Board) when they determined that one could not simultaneously be an immigrant and nonimmigrant. The mere fact that a published case

predates the U visa rule does not serve to automatically invalidate guiding case law precedent. 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).

The petitioner has been a lawful permanent resident of the United States since November 17, 2000. On November 2, 2011, an immigration judge ordered him removed from the United States. The petitioner filed an appeal of the immigration judge's removal order with the Board, and the Board remanded the case to the immigration judge. The petitioner remains in removal proceedings before the Immigration Court in Los Angeles, California, and his next hearing is scheduled for July 8, 2014. Lawful permanent resident status terminates upon entry of a final administrative order of removal, and since the petitioner is still in removal proceedings and his order of removal has not been finalized, he 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)). 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 claims that the petitioner is eligible to apply for U classification because the U visa eligibility requirements do not exclude lawful permanent residents from applying for this form of relief. The petitioner is not precluded from applying for U nonimmigrant status but he failed to establish his eligibility because 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.

Accordingly, the petitioner is ineligible for U nonimmigrant status because he is currently a lawful permanent resident. We note, however, that even if the petitioner's status as a lawful permanent resident had been terminated, 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 second Form I-918 Supplement B submitted by the petitioner in response to the RFE was signed by Sergeant [REDACTED] Office of Criminal Investigation, [REDACTED] California Police Department (certifying official), on June 27, 2012. The petitioner is listed as the victim in Part 1; however, 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. The certifying official indicated that “[a]t this point, there is no indication that the victim has been uncooperative in this 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).” Although in the Form I-918 Supplement B the certifying official stated the petitioner has not been “uncooperative,” the certifying official did not endorse the petitioner’s helpfulness such that he is able to meet the helpfulness criterion at section 101(a)(15)(U)(i)(III) of the Act. 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.¹ Contrary to 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).

Although in her denial decision on the Form I-918 U petition the director only indicated that the petitioner was inadmissible to the United States based on his lawful permanent resident status, a full review of the record shows that the petitioner is inadmissible under sections 212(a)(2)(A)(i)(II) (controlled substance violation) and 212(a)(2)(C) (controlled substance trafficker) of the Act.

¹ 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 (9th Cir. 2003).

The record shows that on December 12, 2002, the petitioner was convicted of possessing for sale or purchasing for the purpose of selling a controlled substance (cocaine), in violation of section 11351 of the California Health and Safety Code (H&S), for which he was sentenced to 10 days incarceration and three years of probation. On January 8, 2004, the petitioner's probation was revoked but was reinstated on February 18, 2004. On May 21, 2004, based on his probation violations, the petitioner's sentence was modified to serve an additional 60 days in jail.

The director found the petitioner inadmissible under section 212(a)(2)(A)(i)(II) of the Act, for his controlled substance violation. 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 to a controlled substance as a result of his 2002 conviction. In addition, the director found the petitioner inadmissible under section 212(a)(2)(C) (controlled substance trafficker) of the Act. The petitioner's conviction for violating Cal. Health and Safety Code § 11351 is sufficient evidence to reasonably believe that the petitioner has been involved in illicit trafficking of a controlled substance, cocaine. Consequently, the petitioner is inadmissible under section 212(a)(2)(C) of the Act as an alien who the Attorney General knows or has reason to believe is a controlled substance trafficker.

Conclusion

The petitioner is a lawful permanent resident of the United States, 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.