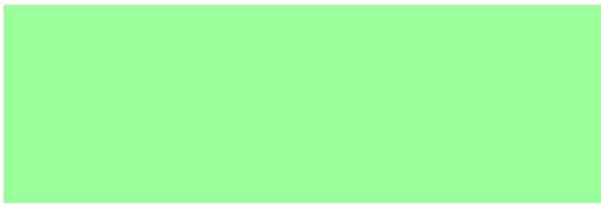


(b)(6)

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

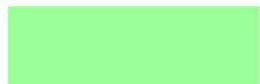


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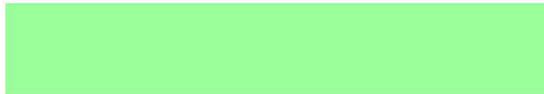
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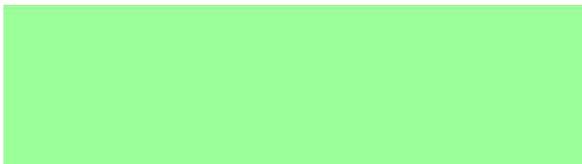
PETITIONER:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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*

Section 101(a)(15)(U)(i) 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. Section 212(d)(14) of the Act requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a 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 the Dominican Republic who entered the United States on March 20, 2003 as a lawful permanent resident. The petitioner filed the instant Form I-918 U petition with an accompanying law enforcement certification (Form I-918 Supplement B) on July 11, 2011. On February 24, 2012, an immigration judge ordered the petitioner removed from the United States. The petitioner filed an appeal of the immigration judge's decision with the Board of Immigration Appeals (Board). On May 31, 2012, the Board returned the record to the immigration judge to prepare a complete record. On October 10, 2012, the director found that the petitioner did not establish his eligibility for U nonimmigrant status and denied the Form I-918 U petition accordingly. In his 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. The director also noted that the petitioner was inadmissible to the United States. The petitioner, through counsel, timely appealed the denial of the Form I-918 U petition. On November 21, 2012, an immigration judge ordered the petitioner removed from the United States and terminated his lawful permanent resident status.

On appeal, counsel submits a brief and an Application for Advance Permission to Enter as Nonimmigrant (Form I-192).

### *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. 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).

When he filed the Form I-918 U petition in July 2011, the petitioner was a lawful permanent resident and such status did not terminate until November 2012 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)). Even though the petitioner's lawful permanent resident status terminated upon entry of the final administrative order of removal, 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 he was a lawful permanent resident when he applied for such status in July 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 is inadmissible to the United States and the grounds of inadmissibility have not been waived.

### 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 director noted in his decision denying the Form I-918 U petition that the petitioner was inadmissible to the United States under sections 212(a)(2)(A)(i)(II) (controlled substance violation), 212(a)(2)(C) (reason to believe alien is a controlled substance trafficker), and 212(a)(6)(A)(i) (present without admission or parole). On appeal, the petitioner submits a Form I-192 to waive his grounds of inadmissibility; however, there is no evidence in the record that the director adjudicated this application. Since the director noted that the petitioner was inadmissible, we will review if 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 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.

The record shows that on April [REDACTED] the petitioner was convicted of criminal sale of a controlled substance (cocaine) in the fifth degree, in violation of section 220.31 of the New York Penal Code, for which he was sentenced to five years of probation.

Criminal court documents in the record support the petitioner’s inadmissibility 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 [REDACTED] conviction. In addition, the petitioner’s conviction for violating N.Y. Penal Code § 220.31 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.

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 March 20, 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. In addition, 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.