



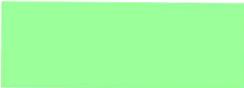
U.S. Citizenship
and Immigration
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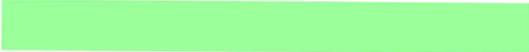


Date: **SEP 30 2014**

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.

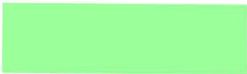
This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion 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 nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

The director denied the petition because the petitioner was a lawful permanent resident (LPR) of the United States at the time he filed the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), and, therefore, was ineligible to be a nonimmigrant. The director also noted that the petitioner is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) (commission of a crime of moral turpitude) of the Act. On appeal, counsel submits a brief and additional evidence.

Applicable Law

Section 101(a)(15)(U) 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, as well as the victims’ qualifying family members. 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.

Section 212(a)(2) of the Act pertains to criminal and related grounds of inadmissibility and states, in pertinent part:

(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.

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 an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

Facts and Procedural History

The petitioner is a native and citizen of the Philippines, who was admitted to the United States as an LPR on May 19, 1981. Removal proceedings were initiated against the petitioner on February 24, 2012, due to his criminal conviction in the State of Minnesota for the offense of criminal sexual conduct in the second degree on October [REDACTED]. An immigration judge ordered the petitioner removed on December 10, 2012 and the Board affirmed the immigration judge's decision on April 11, 2013. The record indicates that the petitioner was removed from the United States on June 3, 2013.

The petitioner filed the instant Form I-918 U petition on April 10, 2012, along with a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192 waiver). On June 6, 2013, the director denied the Form I-918 U petition, noting the petitioner's ineligibility for nonimmigrant classification because of his LPR status at the time he filed the petition. Specifically, the director, citing *Matter of A*, 6 I&N Dec. 651 (BIA 1995), stated that an alien may not be both an immigrant and a nonimmigrant at the same time. The director also noted that the definition of "immigrant" at section 101(a)(15) of the Act does not include an alien described at section 101(a)(15)(U) of the Act. The petitioner filed a timely appeal. On appeal, counsel states that the director's decision was in error because the petitioner's LPR status had been terminated by the time the director entered a decision on the Form I-918 U petition.

Analysis

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d. Cir. 2004). Upon review of the record, we concur with the director's decision to deny the petition.

Lawful permanent resident status terminates upon entry of a final administrative order of removal. 8 C.F.R. § 1.2 (defining *Lawfully admitted for permanent residence*); 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)). 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. *Matter of Gunaydin*, 18 I&N Dec. at 328. At the time the petitioner filed the instant Form I-918 U petition in April 2012, removal proceedings against the petitioner remained pending, and his removal order did not become final until the Board issued its decision in April 2013. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec.



248 (Reg. Comm'r 1978). Consequently, as a lawful permanent resident, the petitioner was ineligible for nonimmigrant U classification at the time he filed his Form I-918 U petition.¹

The director also noted the petitioner's inadmissibility under section 212(a)(2)(A)(i) of the Act based on his criminal conviction. As the director did not discuss this issue in probative detail and as we have determined that the petitioner is ineligible for nonimmigrant U classification on another ground, we need not address this issue here.

Conclusion

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.

¹ As noted by the director in his decision, 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 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.