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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: AUG 0 7 2015

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:

NO REPRESENTATIVE OF RECORD

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

**DISCUSSION**: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition. 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.

The director denied the petition because as a lawful permanent resident of the United States, the petitioner is ineligible for U nonimmigrant status.

*Applicable Law*

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."

*Facts and Procedural History*

The petitioner is a native and citizen of Mexico who adjusted her status to that of a lawful permanent resident in June 1990. The petitioner was ordered removed by an immigration judge on December 9, 2013 and her appeal was dismissed by the Board of Immigration Appeals (BIA) on April 30, 2014. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) on March 31, 2014. On September 24, 2014, the director found that 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 a nonimmigrant.[1] The petitioner timely appealed the denial of the Form I-918 U petition.[2]

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[1] The director also determined, without discussion, that the petitioner did not establish that she was helpful to law enforcement in the investigation or prosecution of qualifying criminal activity and that she was admissible to the United States. As the petitioner is otherwise not eligible for U nonimmigrant status, these grounds will not be addressed.

*Analysis*

We conduct *de novo* appellate review. 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).

In removal proceedings, a person's lawful permanent resident status terminates with the "entry of a final administrative order of deportation, i.e., when the Board renders its decision in the case upon appeal or certification or, where no appeal to the Board is taken, when appeal is waived or the time allotted for appeal has expired." *See Matter of Lok*, 18 I&N Dec. 101 (BIA 1981). Here, the petitioner filed her Form I-918 U petition on March 31, 2014, when she was a lawful permanent resident and such status did not terminate until April 30, 2014, when the BIA dismissed the appeal of her removal order. *See* 8 C.F.R. § 1.2, 1001.1 (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)). The petitioner's lawful permanent resident status terminated upon entry of the final administrative order of removal and 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 Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). 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 was a lawful permanent resident when she applied for such status on March 31, 2014.

*Conclusion*

The petitioner was a lawful permanent resident of the United States at the time she filed her Form I-918 U petition 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. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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[2] The petitioner indicated on the Notice of Appeal (Form I-290B) that a brief or other evidence would be submitted within 30 days of filing the appeal. To date, approximately nine months later, we have received no further brief or evidence from the petitioner. In addition, the petitioner did not provide a statement with the Form I-290B identifying any specific erroneous conclusion of law or statement of fact in the director's decision.