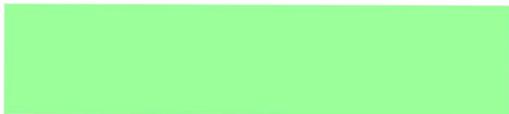


(b)(6)

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

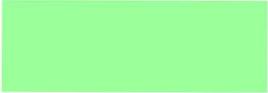


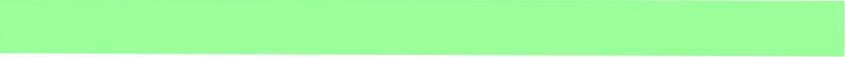
U.S. Citizenship
and Immigration
Services



Date: **FEB 13 2015**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Self-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:

SELF-REPRESENTED

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 cursive script that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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. 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 the petitioner is currently a lawful permanent resident (LPR) of the United States and, therefore, 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)(II) of the Act because he was convicted of a controlled substance violation.

On appeal, the petitioner submits a brief.

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[.]

The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification. 8 C.F.R. § 214.14(c)(4). We conduct appellate review on a de novo basis. All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

The petitioner is a citizen of Guatemala, who was approved for lawful permanent resident status on

November 3, 1989. On October [REDACTED] the petitioner was arrested in [REDACTED] Puerto Rico for attempting to smuggle approximately 1.6 kilograms of heroin into the United States. On June [REDACTED] he pled guilty to Conspiracy to Distribute Narcotics (Heroin), a violation of 21 U.S. Code 846, a felony, in the U.S. District Court for the District of New Jersey. On December [REDACTED] he was convicted of the offense and sentenced to 43 months incarceration. On February [REDACTED] he was paroled into the United States and issued temporary evidence of his lawful admission for permanent residence. Removal proceedings were initiated against the petitioner on March 14, 2006, due to his drug-related criminal conviction in the State of New Jersey. The petitioner remains in removal proceedings.

The petitioner filed the Form I-918, Petition for U Nonimmigrant Status, and his Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192 waiver), on July 26, 2012. On September 5, 2013, the director denied the Form I-918 petition because, as a lawful permanent resident, the petitioner was ineligible for nonimmigrant U classification. 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. The director also noted that the petitioner's drug-related criminal conviction rendered him inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act, and that the petitioner required a waiver. The director issued a separate decision denying the Form I-192 waiver.

On appeal, the petitioner asserts that the agency refused to let him retain documentation of his LPR status, therefore "putting me in a nonimmigrant status." Regarding the conviction that renders him inadmissible, the petitioner maintains that he did not knowingly aid, abet, assist, conspire, or collude in trafficking, and notes that he was an LPR for at least five years prior to his conviction; however, he does not dispute that he pled guilty to and was convicted of the drug-related offense or that it renders him inadmissible.

Analysis

Upon review of the record, we concur with the director's decision to deny the petition. The petitioner is a lawful permanent resident and is ineligible for U nonimmigrant classification. As noted by the director in her 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 record contains no evidence that the petitioner has lost his lawful permanent resident status. Although the petitioner's temporary Form I-551 expired, it is only a form of documentation of such status. The petitioner was placed in removal proceedings due to his criminal conviction and remains in proceedings without a final administrative order of removal. Lawful permanent resident status terminates upon entry of a final administrative order of removal. 8 C.F.R. §§ 1.2, 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. Here, the proceedings against the petitioner remain active without entry of a final administrative order of removal. Lawful permanent residency may also be lost through abandonment, rescission, or relinquishment. *See id.* at 327 n.1. However, none of those circumstances exist in this case. Consequently, the petitioner remains a lawful permanent resident.

The statute and regulations also 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.

As the petitioner remains a lawful permanent resident of the United States, he is ineligible for U nonimmigrant status. The petitioner has failed to overcome this ground for denial on appeal.

Admissibility

Although the petitioner suggests on appeal that he did not conspire to track narcotics, he does not deny that he pled guilty to and was convicted of Conspiracy to Distribute Narcotics (Heroin). He also does not otherwise address the director's determination that he is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act. We concur with the director's inadmissibility determination and note that unless waived, the petitioner's inadmissibility provides another ground that precludes approval of the petition. 8 C.F.R §§ 212.17, 214.14(c)(2)(iv). In this case, the director also denied the petitioner's waiver application, and the petitioner remains inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The petitioner has failed to overcome this additional ground for denial on appeal.

Conclusion

As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. The burden is on the petitioner to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.