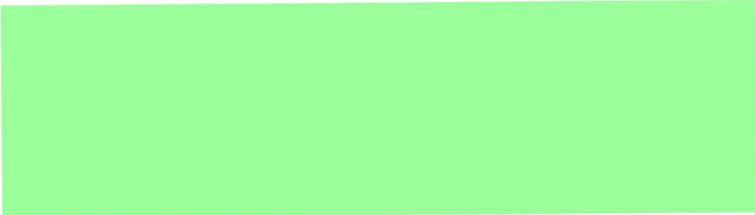
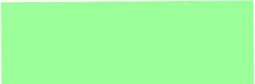


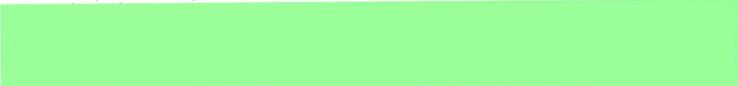


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 07 2015** 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,

for 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 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 on October 1, 2002. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) on April 9, 2013. On January 15, 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 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 she still held lawful permanent resident status and could not simultaneously be an immigrant and a nonimmigrant. The petitioner timely appealed the denial of the Form I-918 U petition.

On January 12, 2004, a Notice to Appear was issued to the petitioner, placing her in removal proceedings. On November 23, 2012, an immigration judge ordered the petitioner removed from the United States, and on June 27, 2014, the Board of Immigration Appeals (Board) dismissed the petitioner’s appeal.

Analysis

We conduct *de novo* appellate review. On appeal, the petitioner states that she is no longer a lawful permanent resident of the United States because she was ordered removed from the United States. 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 she filed the Form I-918 U petition in April 2013, the petitioner was a lawful permanent resident and such status did not terminate until June 2014 when she was ordered removed from the United States by the Board. 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 the filing of the petition, 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 she was a lawful permanent resident when she applied for such status in April, 2013.

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. 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.