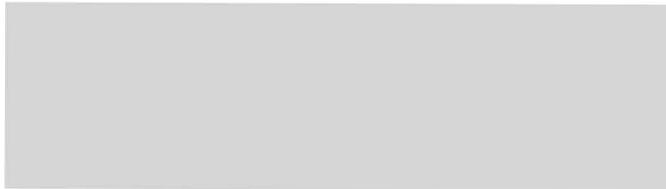




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 29 2015**

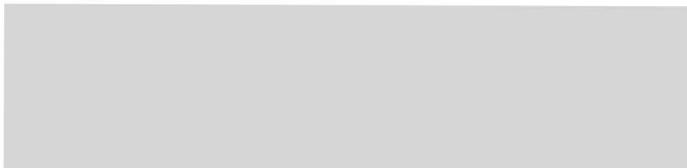
FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:



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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

The director denied the Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), because the petitioner was a lawful permanent resident and was therefore ineligible for U nonimmigrant status. Additionally, the director found that the petitioner was inadmissible to the United States under sections 212(a)(2)(A)(i)(I) (crime involving moral turpitude), 212(a)(2)(A)(i)(II) (controlled substance conviction), and 212(a)(2)(C)(i) (controlled substance trafficker) of the Act and had not demonstrated that the grounds of inadmissibility had been waived.

The petitioner filed a timely appeal. On appeal, the petitioner asserts that he is not a lawful permanent resident because that status terminated when an Immigration Judge ordered him removed and the Board of Immigration Appeals (Board) dismissed his appeal. With regard to his inadmissibility, he does not contest his inadmissibility on the stated grounds. Instead, he states that he filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Form I-192 waiver application), which he asserts is currently pending.¹ He submits a brief and additional evidence to support his assertion that the director should favorably exercise discretion and approve his Form I-192 waiver application and Form I-918 U petition.

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. 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(d)(14) of the Act requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The petitioner bears the burden of establishing that he is admissible to the United States or that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). An inadmissible alien who seeks U nonimmigrant status must file a Form I-192 waiver application in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.

¹ The record does not demonstrate that the petitioner filed a Form I-192 waiver application.

The regulation at 8 C.F.R. § 212.17(b)(3) states, in pertinent part, “There is no appeal of a decision to deny a waiver.” Therefore, we do not have jurisdiction to review whether the director properly denied a Form I-192 waiver application. We can only determine whether the director was correct in finding the petitioner inadmissible to the United States and requiring an approved Form I-192 waiver application pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

A petitioner for U nonimmigrant status must establish his eligibility for a benefit request at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). We cannot approve a petition on appeal after a petitioner becomes eligible under a new set of facts.

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States on December 1, 1988 without inspection, admission, or parole. He became a lawful permanent resident on December 3, 2001. In a decision dated November 6, 2013, an Immigration Judge denied the petitioner’s applications for withholding of removal and protection under the Convention Against Torture and ordered the petitioner removed. The petitioner filed an appeal with the Board. On December 30, 2013, he filed the instant Form I-918 U petition, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification. The Board dismissed his appeal on March 24, 2014, after he filed his Form I-918 U petition. The director denied the Form I-918 U petition on December 8, 2014. The director found that although the petitioner had met the criteria for U nonimmigrant status at section 101(a)(15)(U)(i)(I)-(IV) of the Act, he was a lawful permanent resident of the United States and, therefore, was ineligible for U nonimmigrant status. Additionally, the director found that the petitioner had not met the requirement at 8 C.F.R. § 214.1(a)(3)(i) that he show he is admissible to the United States or that any grounds of inadmissibility have been waived.

Analysis

Upon review of the evidence submitted below and on appeal, we find no error in the director’s decision to deny the petition for U nonimmigrant status.

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 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 addition, section 101(a)(15)(U) of the Act is one nonimmigrant classification that is not included in the definition of “immigrant” at section 101(a)(15) of the Act.

When he filed his Form I-918 U petition on December 30, 2013, the petitioner was a lawful permanent resident. His lawful permanent resident status did not terminate until March 24, 2014, when the Board dismissed his appeal of a removal order issued by an Immigration Judge. 8 C.F.R. §§ 1.2, 1001.1 (stating that lawful permanent resident status terminates upon entry of a final administrative order of removal); *see also Matter of Lok*, 18 I&N Dec. 101, 105 (BIA 1981) (stating that lawful permanent residence terminates “with the entry of a final administrative order of

deportation—generally, 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.”). Accordingly, the petitioner is ineligible for U nonimmigrant status because he was a lawful permanent resident when he filed his I-918 U petition on December 30, 2013.

Additionally, the petitioner has not demonstrated that he is admissible to the United States or that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). Although the petitioner claims to have filed a Form I-192 waiver application, there is no evidence in the record that he filed such application or that the application has been approved. Furthermore, even if he filed a Form I-192 waiver application and the director denied it, we have no jurisdiction to review the denial of a Form I-192 waiver application submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3). Accordingly, we will dismiss the petitioner’s appeal.

Conclusion

In these proceedings, the petitioner bears the burden of proving his eligibility for the 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, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

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