



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF A-E-R-

DATE: SEPT. 22, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (INA, or the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the Form I-918, Petition for U Nonimmigrant Status, because the Petitioner was inadmissible to the United States and his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, had been denied. On appeal, the Petitioner does not contest his inadmissibility and only requests reconsideration of his Form I-192.

#### I. APPLICABLE LAW

Section 101(a)(15)(U)(i) 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 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 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 or she is admissible to the United States or that any grounds of inadmissibility have been waived. *See* 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 a Form I-192 in conjunction with a Form I-918 in order to waive any ground of inadmissibility. 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." As we do not have jurisdiction to review whether the Director properly denied the Form I-192, we do not consider whether approval of the Form I-192 should have been granted. The only issue that may come before us is whether the Director was correct in finding the Petitioner inadmissible to the United States and, therefore, requiring an approved Form I-192 pursuant to 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv).

## II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who was admitted to the United States on September 11, 1971 as a lawful permanent resident. Pursuant to a Notice to Appear, filed on February 16, 2013, he was placed into removal proceedings before the Immigration Court. On February 24, 2014, an Immigration Judge ordered the Petitioner removed, and on March 18, 2014, the Petitioner was removed from the United States to Mexico, where he remains.

The Petitioner filed the instant Form I-918 on March 6, 2014, along with a Form I-918 Supplement B, U Nonimmigrant Status Certification, and a Form I-192. The Director denied the Form I-192, finding that the Petitioner was inadmissible under section 212(a)(2)(A)(i)(I) of the Act (crime involving moral turpitude), section 212(a)(2)(A)(i)(II) of the Act (controlled substances violation), section 212(a)(1)(A)(iv) of the Act (drug abuser or addict), section 212(a)(1)(A)(i) of the Act (communicable disease of public health significance), and 212(a)(9)(A)(i) of the Act (arriving aliens previously ordered removed and seeking admission). After reviewing the evidence submitted in support of the waiver application, the Director denied the Form I-192, concluding that the Petitioner had not shown that he warranted a favorable exercise of discretion. As the Petitioner was found inadmissible and his Form I-192 was denied, the Director consequently denied the Petitioner's Form I-918. The Petitioner filed a timely appeal of the denial of his petition.

## III. ANALYSIS

We conduct appellate review on a *de novo* basis. On appeal, the Petitioner does not dispute that he is inadmissible to the United States on the stated grounds but rather requests a favorable exercise of the Director's discretion to reconsider and grant his Form I-192. However, we have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918. See 8 C.F.R. § 212.17(b)(3). Accordingly, the Petitioner has not established that he is admissible to the United States or that his grounds of inadmissibility have been waived. He is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act, pursuant to 8 C.F.R. § 214.1(a)(3)(i).

Beyond the determination of the Director, the instant petition is also not approvable because the Petitioner was a lawful permanent resident at the time of filing of the instant petition.<sup>1</sup> Lawful permanent resident status terminates upon entry of a final administrative order of removal. See 8 C.F.R. § 1.2 (“[s]uch status terminates upon entry of a final administrative order of exclusion, deportation, or removal.”); 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

---

<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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 on March 6, 2014, removal proceedings against the Petitioner had not yet resulted in a final removal order. The record indicates that the Petitioner did not waive his right of appeal after the immigration judge issued an order of removal against him on February 24, 2014. He subsequently filed the Form I-918 within the thirty-day period to file an appeal of the administrative removal order, before the order became final. He was therefore still a lawful permanent resident. See 8 C.F.R. § 1003.39 (providing that an Immigration Judge's decision becomes final upon waiver of the appeal); 8 C.F.R. § 1241.1(b) (providing that an order of removal becomes final at the conclusion of removal proceedings before the Immigration Judge when a party waives appeal). The Petitioner is required to 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.<sup>2</sup>

#### IV. 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); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-E-R-*, ID# 13662 (AAO Sept. 22, 2015)

---

<sup>2</sup> 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.