



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

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

MATTER OF J-A-A-J-

DATE: FEB. 8, 2016

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 (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.

I. APPLICABLE LAW

Section 101(a)(15)(U) of the Act, 8 U.S.C. § 1101(a)(15)(U), provides U nonimmigrant classification to alien victims of certain qualifying criminal activity and their qualifying family members. 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 214(p)(1) of the Act, 8 U.S.C. § 1184(p)(1) states:

The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

Regarding the application procedures for U nonimmigrant classification, the regulation at 8 C.F.R. § 214.14(c) states, in pertinent part:

(2) *Initial evidence.* Form I-918 must include the following initial evidence:

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- (i) Form I-918, Supplement B, “U Nonimmigrant Status Certification,” signed by a certifying official within the six months immediately preceding the filing of Form I-918[.]

....

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.”

All nonimmigrants must establish their admissibility to the United States or show that any grounds of inadmissibility have been waived. 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, Application for Advance Permission to Enter as Nonimmigrant, in conjunction with a Form I-918, Petition for U Nonimmigrant Status, in order to waive any ground of inadmissibility.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of El Salvador who adjusted status to that of a lawful permanent resident (LPR) of the United States in 1990. Due to the Petitioner’s criminal record, he was first ordered removed by an Immigration Judge on [REDACTED] 2010, and his appeal was dismissed by the Board of Immigration Appeals (the Board) on [REDACTED] 2010. He filed two motions to reopen with the Board that were denied. On January 22, 2013, the Board granted a third motion to reopen after the Petitioner obtained post-conviction relief regarding his removable offense. He filed the instant Form I-918 on October 29, 2013. On March 9, 2015, the Director found that the Petitioner did not establish his eligibility for U nonimmigrant status and denied the Form I-918 accordingly. The Petitioner timely appealed. On November 12, 2015, we issued a notice of intent to deny (NOID) because the Petitioner was an LPR at the time of filing his Form I-918 and therefore ineligible for U nonimmigrant status. In response to the NOID, the Petitioner submits a brief.

III. 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).

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 a petitioner 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. Further, LPR 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)). LPR status 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. Accordingly, the instant Form I-918 is not approvable because the Board had reopened the Petitioner’s removal proceedings and thus the Petitioner was an LPR at the time of the filing.

On appeal, the Petitioner asserts that the plain language of the statute demonstrates that section 214(p)(5) of the Act does not limit USCIS’ authority to grant U nonimmigrant status to an LPR. The Petitioner further asserts that pursuant to 8 C.F.R. § 103.2(b)(8)(ii), USCIS, in its discretion, may deny an application for lack of initial evidence or for ineligibility. The Petitioner contends that USCIS routinely issues RFEs for evidence to establish a person’s eligibility and therefore our contention that a petitioner must be eligible for the relief sought at the time of filing is incorrect.¹

Despite the Petitioner’s contentions on appeal, eligibility for a benefit request must be established at the time of petition filing. See 8 C.F.R. §§ 103.2(b)(1), 214.14(d). The Petitioner is correct in stating that section 103.2(b)(8)(ii) of the regulations allows for USCIS to issue an RFE to establish a Petitioner’s eligibility. However, this section of the regulations does not override the requirement that a petitioner be eligible at the time the benefit request made. The evidence submitted pursuant to an RFE must establish that the Petitioner was eligible for the benefit at the time of filing in order for the petition to be approved.

¹ The Petitioner also asks us to hold this appeal in abeyance until the Board makes a decision in the Petitioner’s removal proceedings. This petition filing is a separate proceeding with a separate record, and we find no reason to hold our decision on this appeal in abeyance, as the Board’s decision has no bearing on the outcome in this case as it was the Petitioner’s status as an LPR at the time of filing that precludes his eligibility for U nonimmigrant status.

The Petitioner was accorded LPR status in 1990. At the time the Petitioner filed his Form I-918 on October 29, 2013, removal proceedings against him had not yet resulted in a final administrative removal order. The record indicates that the Petitioner's appeal before the Board remains pending and therefore he was still an LPR at the time he filed his Form I-918. Consequently, as an LPR, the Petitioner was ineligible for nonimmigrant U classification at the time he filed his Form I-918. *See* 8 C.F.R. § 103.2(b)(1). In addition, a visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). As the Petitioner was a lawful permanent resident of the United States at the time he filed his Form I-918, he is consequently ineligible for nonimmigrant classification under section 101(a)(15)(U)(i) of the Act.

IV. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought by a preponderance of the evidence. *See* 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.

Cite as *Matter of J-A-A-J-*, ID# 14970 (AAO Feb. 8, 2016)