U.S. Citizenship and Immigration Services

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

MATTER OF M-M-

DATE: JAN. 27, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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 and we rejected the Petitioner's subsequent appeal as untimely. The matter is now before us again on a motion to reconsider. The motion will be denied.

## 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:

> (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 a Nonimmigrant, in conjunction with a Form I-918, Petition for U Nonimmigrant Status, in order to waive any ground of inadmissibility.

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Turkey who was accorded lawful permanent resident (LPR) status on August 20, 1993. A Form I-862, Notice to Appear, was issued against the Petitioner on August 23, 2010, placing him into removal proceedings. An immigration judge issued an order of removal against the Petitioner on [redacted] 2012, and the Board of Immigration Appeals (Board) dismissed his subsequent appeal on December 31, 2012. The Petitioner filed the instant Form I-918 on April 20, 2012, without an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification. The Director denied the petition because the Petitioner had not submitted a properly executed Form I-918 Supplement B at the time of filing the Form I-918. In addition, the Director determined that the Petitioner did not establish his eligibility because he was a lawful permanent resident and because he was inadmissible and had not filed a Form I-192 to waive his ground of inadmissibility. The Petitioner appealed the denial of the petition, which we rejected as untimely. The Petitioner now files a motion to reconsider our prior decision and submits a copy of a new Form I-918 Supplement B and other evidence.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for

reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

We conduct appellate review on a *de novo* basis. Upon a full review of the record, the Petitioner has not overcome the Director's grounds for denial. Consequently, the motion will be denied for the following reasons.

## III. ANALYSIS

### A. Requisite Initial Evidence

The submission of a Form I-918 Supplement B with a Form I-918 is required by statute at section 214(p)(1) of the Act ("The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification . . . ."). As provided by the regulation at 8 C.F.R. § 214.14(c)(2)(i), a Form I-918 "must include" as initial evidence a Form I-918 Supplement B "signed by a certifying official within the six months immediately preceding the filing of Form I-918." The Director properly denied the petition below because the Petitioner did not file a Form I-918 Supplement B as required initial evidence with his Form I-918.

On motion, the Petitioner submits a copy of a Form I-918 Supplement B for the first time and states that the failure to file the certification with the initial petition was solely due to the fact that he was unaware that it was required given the other evidence he submitted to establish his eligibility. However, as noted, the Form I-918 Supplement B is required initial evidence and must be submitted with the Form I-918 filing. Further, the Form I-918 Supplement B submitted on motion is a photocopy without the original signature of the certifying official and was not signed within the six-month period preceding the filing of the Form I-918 as required. *See* 8 C.F.R. § 214.14(c)(2)(i). Although we understand the Petitioner's reasons for filing his Form I-918 without the required certification, we lack authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon,* 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials).

The Petitioner's filing of the certification subsequent to USCIS's denial of his Form I-918 does not conform to the regulatory requirements listed at 8 C.F.R. § 214.14(c)(2)(i) for required initial evidence. He, therefore, has also failed to establish his eligibility for U nonimmigrant classification under section 101(a)(15)(U)(i) of the Act. *See* subsections 101(a)(15)(U)(i)(I)–(IV) of the Act (requiring qualifying criminal activity for all prongs of eligibility).[1]

[1] Our denial of this motion is without prejudice to the adjudication of the Petitioner's new Form I-918 and Form I-918 Supplement B in the record.

B. Lawful Permanent Residence

The instant petition is also not approvable because the Petitioner was a lawful permanent resident at the time of the filing of the instant petition. 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.

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 final administrative order of removability based on such acts. *Matter of Gunaydin*, 18 I&N Dec. at 328.

The Petitioner was accorded LPR status on August 20, 1993. At the time the Petitioner filed the instant Form I-918 on April 20, 2012, removal proceedings against him had not yet resulted in a final administrative removal order. The record indicates that the Board did not affirm the immigration judge's order of removal against the Petitioner, resulting in a final order of removal, until December 31, 2012. *See* 8 C.F.R. § 1241.1(a) (order of removal by an immigration judge at the conclusion of proceedings becomes final upon the Board's dismissal of an appeal of the order). He was therefore still a lawful permanent resident at the time he filed his Form I-918 in April 2012. 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.

C. Admissibility

Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires 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 regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in order to waive a ground of inadmissibility. We have no jurisdiction to review the

denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3).

As the Director noted, the Petitioner is inadmissible under section 212(a)(7)(A)(i) (not in possession of valid unexpired passport) of the Act, as the Petitioner's passport copy in the record reflects that it is expired.[2] The Petitioner did not file a Form I-192 to waive his inadmissibility as required. Accordingly, the instant petition is not approvable because the Petitioner is inadmissible to the United States and he did not file a Form I-192 to waive his inadmissibility.

## IV. CONCLUSION

The motion will be denied for the above stated reasons, with each considered as an independent and alternate basis for the decision. In these 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. at 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of M-M-*, ID# 15297 (AAO Jan. 27, 2016)

[2] The record also indicates that the Petitioner was convicted of aggravated assault in violation of section 2702(a)(1) of the PA. Cons. Stat. Ann. on [redacted] 2004, for which he was sentenced to 11 ½ months to 23 months. The Petitioner was also convicted of possession of drug paraphernalia and possession of cannabis less than 20 grams, in violation of sections 893.147 and 893.13 of the Fla. Stat. Ann. on [redacted] 2002. In any future filings, the Petitioner must also address whether his convictions render him inadmissible under sections 212(a)(2)(A)(i)(I) and (II) of the Act as someone who has been convicted of a crime involving moral turpitude and for convictions relating to a controlled substance.