



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

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

MATTER OF T-D-

DATE: OCT. 27, 2016

**APPEAL OF VERMONT SERVICE CENTER DECISION**

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

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity.

The Director, Vermont Service Center, denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that as a lawful permanent resident of the United States, the Petitioner is ineligible for U-1 nonimmigrant classification. The Director also noted that the Petitioner is inadmissible and his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (waiver application), was denied.

The matter is now before us on appeal. The Petitioner submits a brief in which he asserts that he is eligible for U nonimmigrant status because he was the victim of a crime and persecution.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

The Act differentiates immigrants from nonimmigrants. *See* section 101(a)(15) of the Act (providing that every alien is an immigrant except those aliens in specified nonimmigrant classifications, such as U nonimmigrants). Lawful permanent residents are immigrants. *See* section 101(a)(20) of the Act (defining a lawful permanent resident as a person who has "been lawfully accorded the privilege of residing permanently in the United States *as an immigrant . . .* (emphasis added.)"

Lawful permanent residency does not end upon the commission of acts that make the individual removable, but upon its termination, rescission, or relinquishment. *Matter of Gunaydin*, 18 I&N Dec. 326, 328 (BIA 1982). Lawful permanent residency may also be lost through abandonment. *Matter of Huang*, 19 I&N Dec. 749 (1988).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). A petitioner may submit any

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evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

### A. Lawful Permanent Residents Cannot Be Accorded a U Visa or U Nonimmigrant Status

Because lawful permanent residents are defined at section 101(a)(20) of the Act as immigrants, and the U nonimmigrant classification is excepted from the definition of immigrant at section 101(a)(15) of the Act, it follows that a lawful permanent resident cannot be granted U nonimmigrant status until the individual's lawful permanent residency has been lost through termination, rescission, relinquishment, or abandonment. Only those lawful permanent residents who seek A, E, or G status may adjust to these specific nonimmigrant classifications.<sup>1</sup> *See* section 247 of the Act, 8 U.S.C. § 1257.

### B. Lawful Permanent Residency Must Have Ended as of the Filing Date of the U Petition

The Act provides for an annual numerical limitation on U-1 visas or grants of U-1 nonimmigrant status. Section 214(p)(2) of the Act. U.S. Citizenship and Immigration Services (USCIS) assigns each U petition a priority date, which is the petition's filing date, as a U-1 visa or U-1 status is allocated according to priority date. *See* 8 C.F.R. § 214.14(d). Because lawful permanent residents may not also hold U nonimmigrant status, lawful permanent residency must have terminated prior to the assigned priority date. *See* 8 C.F.R. § 103.2(b)(1) (providing that eligibility for an immigration benefit must be established as of the filing date of a visa petition).

### C. The Petitioner was a Lawful Permanent Resident When He Filed His U Petition

The Petitioner was admitted to the United States as a lawful permanent resident on August 29, 2002. At the time he filed his U petition on November 26, 2013, he was in ongoing removal proceedings before the Immigration Court and his lawful permanent residence had not been terminated, rescinded, relinquished, or abandoned. Therefore, he is not eligible for U nonimmigrant status.<sup>2</sup>

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<sup>1</sup> The A, E, and G nonimmigrant classifications are for foreign government officials, treaty traders and investors, and representatives to international organizations, respectively. *See* 8 C.F.R. § 214.2.

<sup>2</sup> The record of proceedings also indicates that an Immigration Judge granted the Petitioner's application for cancellation of removal under section 240A(a) of the Act on [REDACTED] 2016. Even if the Petitioner were eligible for U nonimmigrant status, the grant of cancellation of removal renders his U petition moot.

### III. 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). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of T-D-*, ID# 11316 (AAO Oct. 27, 2016)