



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

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

MATTER OF M-P-A-

DATE: SEPT. 12, 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). 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). The Director concluded that as a lawful permanent resident of the United States, the Petitioner is ineligible for U-1 nonimmigrant classification.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief, claiming that the Director's decision was in error because her admission as a permanent resident was not lawful because she committed fraud in obtaining her asylee status upon which her permanent residency was based.

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

#### I. APPLICABLE 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

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. FACTS AND PROCEDURAL HISTORY

The Petitioner is a native and citizen of Mexico who was granted lawful permanent residency on October 4, 2010, through the filing of a Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application). The Petitioner's admission as a lawful permanent resident was based on her asylee status, which the Petitioner now claims was fraudulently obtained. According to the Petitioner, she was not lawfully accorded asylee or permanent resident status because her spouse forced her to sign her asylum application, in which the Petitioner claimed to be from Guatemala and the victim of persecution on account of her political opinion. The Petitioner's underlying asylum status has not been terminated. Similarly, the Petitioner has never been placed into removal proceedings under section 240 of the Act, 8 U.S.C. § 1229a.

The Petitioner filed the U petition in 2013 after becoming a lawful permanent resident in 2010. The Director denied the U petition, noting the Petitioner's ineligibility for nonimmigrant classification because of her lawful permanent residency. Specifically, the Director stated that an individual may not be both an immigrant and a nonimmigrant at the same time.<sup>1</sup> The Petitioner filed a timely appeal, stating in her brief, in part, that because she obtained her asylee status and resulting lawful permanent residency through fraud, she was never "lawfully" admitted as a permanent resident and therefore she may be granted U nonimmigrant classification.

## III. 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>2</sup> *See* section 247 of the Act, 8 U.S.C. § 1257.

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<sup>1</sup> In her decision, the Director also indicated that the Petitioner was ineligible for U nonimmigrant status because she is inadmissible to the United States as a lawful permanent resident. However, because lawful permanent residency is not a ground of inadmissibility under section 212(a) of the Act, 8 U.S.C. § 1182(a), that portion of the Director's decision is withdrawn.

<sup>2</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.

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 She Filed Her U Petition

On appeal the Petitioner cites to *Matter of Koloamatangi*, 23 I&N Dec. 548 (BIA 2003) and *Monet v. INS*, 791 F.2d 752 (9th Cir. 1986), arguing that she was not a lawful permanent resident when she filed her U petition because she procured both her asylee status and lawful permanent residency through fraud.

We acknowledge the holdings in both *Koloamatangi* and *Monet*; however, neither case applies to the Petitioner's situation because no formal adjudication has been made that the Petitioner procured her asylee status and resulting lawful permanent residency through fraud, and we are not the proper body for making this determination. *See Nijjar v. Holder*, 689 F.3d 1077 (9th Cir. 2012) (providing that only the Attorney General may terminate asylum status granted by USCIS);<sup>3</sup> *see also Matter of Pena*, 26 I&N Dec. 613 (BIA 2015) (noting that the unlawfulness of *Koloamatangi's* permanent resident status was resolved after *Koloamatangi* was afforded the due process owed to him through removal proceedings and not prior to the commencement of removal proceedings).

Here, the Petitioner has never been placed in removal proceedings for an Immigration Judge to determine the lawfulness of the Petitioner's permanent resident status and she, therefore, remains a lawful permanent resident despite her assertions to the contrary. *See* 8 C.F.R. § 1.2 (defining the term *lawfully admitted for permanent residence* as a status that "terminates upon entry of a final administrative order of exclusion, deportation, or removal").<sup>4</sup> Although lawful permanent residency may also be lost through rescission, relinquishment or abandonment, none of these situations apply to the Petitioner.

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<sup>3</sup> *Nijjar* applies to those individuals, like the Petitioner, who live within the jurisdiction of the Ninth Circuit Court of Appeals. *See Matter of A-S-J-*, 25 I&N Dec. 893, 901 n.2 (BIA 2012).

<sup>4</sup> Through these proceedings, the Petitioner has admitted to filing a frivolous asylum application to gain an immigration benefit to which she was not entitled. Section 208(d)(6) of the Act, 8 U.S.C. § 1158(d)(6), proscribes that an individual who has knowingly made a frivolous asylum application and has been provided with notice of the consequences of such action is permanently ineligible for any benefits under the Act. Only an Immigration Judge can find that the Petitioner is subject to this statutory bar. *See Matter of X-M-C-*, 25 I&N Dec. 322 (BIA 2010); 8 C.F.R. § 208.20.

The record contains insufficient evidence to establish that the Petitioner's lawful permanent residency has been rescinded under section 246 of the Act, 8 U.S.C. § 1256. Similarly, the record does not establish that the Petitioner abandoned her lawful permanent residency after a temporary visit abroad: she claimed that her last entry into the United States occurred in 1983, prior to becoming a lawful permanent resident in 2010. *See Khoshfahm v. Holder*, 655 F.3d 1147 (9th Cir. 2011) (loss of lawful permanent residency through abandonment may occur when an individual's trip outside of the United States is not a "temporary visit abroad").

Instead, the Petitioner sought to voluntarily relinquish her lawful permanent residency by executing and submitting to the Director a Form I-407, Abandonment of Lawful Permanent Resident Status. According to its *Form Instructions*, a Form I-407 is "used by lawful permanent resident aliens who are outside of the United States or at a Port of Entry who want to abandon [lawful permanent residency]." The *Form Instructions* further provide that an individual files the Form I-407 with a USCIS international field office, a U.S. Department of State (DOS) Embassy or Consulate, or a U.S. Customs and Border Protection (CBP) officer at a U.S. Port of Entry. There is no evidence that the Petitioner executed this document while she was outside of the United States, seeking to gain admission into the United States; and she did not submit the Form I-407 to a proper filing location, as it is signed only by the Petitioner and contains no evidence that an authorized DOS or DHS filing location official received, reviewed, and took any action on it.

More importantly, the Petitioner is seeking to abandon lawful permanent residency solely for the purpose of establishing eligibility for a nonimmigrant classification to which she is not entitled as an immigrant. *See* sections 101(a)(15),(20) of the Act. We do not recognize this type of putative abandonment of lawful permanent residency. *Cf. Matter of Aldecoaotalora*, 18 I&N Dec. 430, 431 (BIA 1983)(quoting *Gregory v. Helvering*, 293 U.S. 465 (1935), for the proposition that where a transaction on its face is outside the plain intent of the statute involved, it should be disregarded because to do otherwise "would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose").

#### IV. CONCLUSION

In summary, the Petitioner is ineligible for U nonimmigrant classification because lawful permanent residents may not simultaneously hold U nonimmigrant status, and the Petitioner was (and remains) a lawful permanent resident when she filed her U petition in 2013.

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 M-P-A-*, ID# 54862 (AAO Sept. 12, 2016)