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 of the Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition). The Director concluded that as the Petitioner was a lawful permanent resident of the United States when he filed his petition, he is ineligible for U-1 nonimmigrant classification.

On appeal, the Petitioner asserts that he disagrees with the inadmissibility decision and that he is submitting a newly-dated U petition.¹

Upon de novo review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(U)(i) of the Act provides U nonimmigrant classification to victims of qualifying crimes who suffer substantial physical or mental abuse as a result of the offense. It also provides that these victims must possess information regarding the qualifying crime and be helpful to law enforcement officials in the investigation or prosecution of the crime.

A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). Although a petitioner may submit any evidence for us to consider, we determine, in our sole discretion, the credibility of and the weight to give all of the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

¹ The record shows that on September 13, 2016, the Petitioner submitted a second U petition that was denied by the Director on February 25, 2017.
II. ANALYSIS

The record shows that the Petitioner entered the United States in 1997 as a nonimmigrant, and in 2008 became a lawful permanent resident through an approved Form I-485, Application to Adjust Status, based on a Form I-130, Petitioner for Alien Relative. The record shows that in 2012, the Petitioner was the victim of a felonious assault, and based on that victimization, he filed a U petition in October 2015. The record further reflects that following convictions for multiple felonies, the Petitioner was placed in removal proceedings in 2015 and was ordered removed by an Immigration Judge in [redacted] 2016.

The Petitioner does not contest that he was in lawful permanent resident status at the time that he filed his U petition. 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 an individual who has “been lawfully accorded the privilege of residing permanently in the United States as an immigrant” (emphasis added)). 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. See section 247 of the Act, 8 U.S.C. § 1257.

In addition, 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 assigns each U petition a priority date, which is the petition’s filing date, and 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).

Here, although the Petitioner’s lawful permanent resident status terminated with the order of removal, he was still a lawful permanent resident at the time of filing his U petition. 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”). Consequently, the Petitioner is ineligible for U nonimmigrant classification because lawful permanent residents may not simultaneously hold U nonimmigrant status, and the Petitioner was a lawful permanent resident when he filed his U petition in 2015.

---

2 Even if the Petitioner had not been a lawful resident at the time of filing his U petition, the record indicates that he would otherwise be inadmissible due to his criminal convictions.
Matter of G-K-

ORDER: The appeal is dismissed.

Cite as Matter of G-K-, ID# 491089 (AAO Aug. 30, 2017)