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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: **JUL 17 2015**

[Redacted]

IN RE: Applicant:

[Redacted]

APPLICATION: Application for T Nonimmigrant Status under section 101(a)(15)(T)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(T)(i).

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, (the director) denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant seeks nonimmigrant classification under section 101(a)(15)(T)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(T)(i), as a victim of a severe form of trafficking in persons.

The director denied the application because as a lawful permanent resident of the United States, the applicant is ineligible for T nonimmigrant status.

Facts and Procedural History

The applicant is a native and citizen of Kenya who was admitted to the United States as a lawful permanent resident on September 8, 1999. Removal proceedings were initiated against the applicant on February 13, 2013, due to her criminal convictions in the State of Florida for the offenses of robbery, battery and burglary.

The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on November 12, 2013. On June 13, 2014, the director denied the Form I-914, noting the applicant's ineligibility for T nonimmigrant classification because of her lawful permanent resident status. Specifically, the director, citing *Matter of A*, 6 I&N Dec. 651 (BIA 1955), stated that an alien may not be both an immigrant and a nonimmigrant at the same time. The director also noted that the definition of "immigrant" at section 101(a)(15) of the Act does not include an alien described at section 101(a)(15)(T) of the Act.

The applicant filed her appeal of the director's decision on July 16, 2014, stating that she was under the jurisdiction of the Executive Office for Immigration Review (EOIR) in removal proceedings and the immigration judge had found that she was removable as charged on the Notice to Appear (NTA) that was filed with the immigration court. The applicant did not contest her ineligibility to be granted T nonimmigrant status while still a lawful permanent resident. Instead, the applicant stated that she would provide notice of the immigration judge's decision once it had been rendered, as she believed that she would lose her lawful permanent residency and thereby become eligible to be granted T nonimmigrant status.

On July 23, 2014 the applicant executed an Abandonment of Lawful Permanent Resident Status (Form I-407), and submitted this form to the immigration court during her removal proceedings on the same day. On August 6, 2014, the immigration judge issued an order, stating:

This is a summary of the decision entered on August 6, 2014.

This memorandum is solely for the convenience of the parties.

Respondent has agreed and consented to abandon and relinquish his/her Legal Permanent Residency Status to the United States. The Respondent knowingly and voluntarily has waived the right to contest Abandonment of Legal Permanent Residency Status to the United States.

Analysis

As previously noted, the applicant does not contest that a lawful permanent resident is ineligible to be classified as a T nonimmigrant. Rather, the applicant believes that she is eligible to be granted T nonimmigrant status because she relinquished her lawful permanent residency through the completion of a Form I-407 that she submitted to the immigration court after filing her Form I-914. As we shall discuss, the applicant's Form I-914 may not be approved because she did not properly relinquish her lawful permanent residency upon her execution of a Form I-407 and she, therefore remains a lawful permanent resident. Furthermore, even if the applicant's relinquishment of her lawful permanent residency status had been proper, she would still be ineligible for T nonimmigrant classification because she remained a lawful permanent resident at the time she filed her Form I-914.

The record indicates that the applicant executed a Form I-407 on July 23, 2014 because she wanted to "pursue a T visa and cannot have status to continue," and that she submitted this Form I-407 to an immigration judge during removal proceedings on the same day. The *Form Instructions*¹ state that 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 resident (LPR)] status." More importantly, the *Form Instructions* provide that an applicant files the Form I-407 with a USCIS international field office, a U.S. Department of State Embassy or Consulate, or a U.S. Customs and Border Protection (USCBP) officer at a U.S. Port of Entry, as only DHS and Department of State (DOS) officers "record the facts relating to permanent resident aliens who abandon LPR status during an in-person interview or by correspondence."

At the time she executed her Form I-407, the applicant was physically present in the United States, and did not file her form with the proper filing location, but instead provided it to the immigration court during the course of a removal hearing on July 23, 2014. Only a DOS or DHS official may process an applicant's relinquishment of lawful permanent residency through the submission of a Form I-407. The role of an immigration judge in the relinquishment process is to conduct a hearing on an applicant's decision to relinquish LPR status, if the applicant so chooses. On her Form I-407, the applicant at Part 6(e) waived her right to a hearing before an

¹ *Form instructions* means instructions on how to complete and where to file a benefit request, supporting evidence or fees, or any other required or preferred document or instrument with a [Department of Homeland Security (DHS)] immigration component. Form instructions prescribed by [U.S. Citizenship and Immigration Services (USCIS)] or other DHS immigration components on their official Internet Web sites will be considered the currently applicable version, notwithstanding paper or other versions that may be in circulation, and may be issued through non-form guidance such as appendices, exhibits, guidebooks, or manuals. 8 C.F.R. § 1.2.

immigration judge. Accordingly, we must deem the immigration judge's August 6, 2014 order as only an acknowledgment of the applicant's submission of a Form I-407 before EOIR, and not a properly filed and processed relinquishment of her LPR status. The applicant remains a lawful permanent resident as of the date of this decision and will continue to hold LPR status until it is terminated by an immigration judge through the entry of a final administrative order of removal.² See definition of *lawfully admitted for permanent residence* at 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)).³

Even if the applicant's LPR status had been properly relinquished through her submission of a Form I-407, she would nevertheless be ineligible for T nonimmigrant classification because her relinquishment occurred after she filed her Form I-914. Eligibility for a benefit request must be established at the time of filing. 8 C.F.R. § 103.2(b)(1) (“An applicant . . . must establish that he or she is eligible for the requested benefit at the time of filing the benefit request . . .”). This distinction is particularly important for individuals seeking T nonimmigrant status, who are subject to an annual cap on T-1 classification and are placed on a waiting list, by filing date of application, if they cannot be granted such status due solely to the cap. See 8 C.F.R. § 214.11(m).

As of the filing date of her Form I-914 on November 12, 2013 the applicant was still a lawful permanent resident because she had not yet executed the Form I-407 and her removal proceedings had not resulted in the entry of a final administrative order of removal. Although the applicant stated on appeal that the immigration court found her removable on the charges listed on the NTA, 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. Accordingly, had it been properly executed, the applicant's Form I-407, dated July 23, 2014, would not make her eligible for T nonimmigrant status because her relinquishment post-dates the filing of her Form I-914.⁴

² Our records indicate that the applicant is next scheduled for a hearing before the [REDACTED] Florida Immigration Court on [REDACTED].

³ Although the applicant does not contest that an LPR is ineligible to simultaneously be granted T nonimmigrant classification, we note for the record that there is no statutory or regulatory provision that would permit an LPR to adjust status to that of a T nonimmigrant, or simultaneously hold T nonimmigrant status. The Act allows an alien to change from one nonimmigrant classification to another and permits LPRs to adjust to A, E and G nonimmigrant classification, but the Act contains no provision for the adjustment of an LPR to T nonimmigrant status. See sections 247, 248 of the Act, 8 U.S.C. §§ 1257, 1258.

⁴ The denial of the application is without prejudice to the filing of a new Form I-914 should an immigration judge terminate the applicant's LPR status during any future removal proceeding.



Conclusion

The applicant bears the burden of proof to establish her eligibility for T nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(1)(2). Here, that burden has not been met.

ORDER: The appeal is dismissed.