

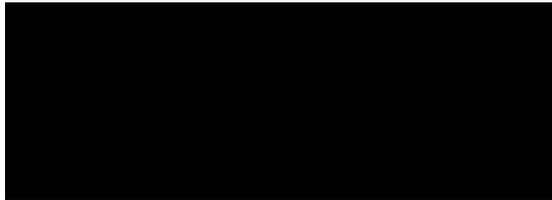
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **NOV 08 2011** Office: VERMONT SERVICE CENTER FILE:

IN RE: PETITIONER:

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the Petition for U Nonimmigrant Status (Form I-918 U petition) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

Applicable Law

Section 101(a)(15)(U) of the Act, provides for U nonimmigrant classification to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity, as well as the victims' 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.

Factual and Procedural History

The petitioner is a native and citizen of Mexico who was granted lawful permanent resident (LPR) status on March 25, 2004. In February 2010, the petitioner was placed into removal proceedings¹ pursuant to section 237(a)(2)(A)(i) of the Act, 8 U.S.C. § 1227(a)(2)(A)(i), based upon her conviction in the State of Colorado for Fraud and Misuse of Permits and Other Documents in violation of 18 U.S.C. § 1546(a).²

The petitioner filed the U nonimmigrant petition on January 31, 2011, and the Form I-192, Application for Advance Permission to Enter as Nonimmigrant, on the same date. On February 11, 2011, the director denied the Form I-918 U petition, noting the petitioner's ineligibility for nonimmigrant classification because of her LPR status. Specifically, the director, citing *Matter of A*, 6 I&N Dec. 651 (BIA 1995), 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)(U) of the Act.

On appeal, counsel asserts that the petitioner does not contest her inability to simultaneously hold immigrant and nonimmigrant status. Instead, the petitioner disputes that she cannot submit a U nonimmigrant petition along with an Application to Relinquish Lawful Permanent Resident Status (Form I-407), and have U.S. Citizenship and Immigration Services (USCIS) accept the execution of the Form I-407 upon approval of the U nonimmigrant petition. Counsel also states that the director failed to provide notice to the petitioner of any alleged insufficiency relating to her renunciation of LPR status prior to denying the petition.

¹ The petitioner is scheduled to appear before the Denver, Colorado Immigration Court on December 6, 2011.

² United States District Court, District of Colorado, [REDACTED]

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence. 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act, 8 U.S.C. § 1184(p)(4). Upon review of the record, we concur with the director's decision to deny the petition.

The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. 8 C.F.R. § 103.2(b)(1), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (noting that eligibility must be established at the time of filing the visa petition). Although the petitioner submitted a Form I-407, dated January 22, 2011, to relinquish her LPR status, she was still an LPR when filing her U nonimmigrant petition on January 31, 2011.

According to the *Instructions* to the Form I-407, item 6(a) “requires a clear and concise statement in the alien’s own words [to] establish *beyond any reasonable doubt that the alien has voluntarily, willingly and affirmatively abandoned status*” (Emphasis added). The phrase “has voluntarily, willingly and affirmatively abandoned” refers to a relinquishment of LPR status that has already occurred or will occur no later than the date of the alien’s signature on the Form I-407.³

Here, the petitioner states at item 6(a) that she is abandoning her LPR status “on the condition of the grant of my U visa petition.” At item 6(c), where the petitioner indicates the date she abandoned her status, she states: “TBD (upon approval of my U visa petition).” The statements on the Form I-407 fail to demonstrate, beyond a reasonable doubt, that the petitioner had voluntarily, willingly and affirmatively abandoned her LPR status as of January 22, 2011, the date she filed the Form I-407 or at any time earlier. To the contrary, the petitioner made it clear that she would not consent to relinquishing her LPR status unless USCIS approved her U nonimmigrant petition. Accordingly, we find that at the time she filed the Form I-918 U petition, the petitioner remained an LPR despite her execution of a Form I-407 because her statements on the Form I-407 failed to establish, beyond a reasonable doubt, that she “*had voluntarily, willingly and affirmatively abandoned*” her LPR status.

Regarding counsel’s claims concerning the director’s failure to issue a Notice of Intent to Deny (NOID) or Request for Evidence (RFE) prior to denying the petition, we find no procedural violation. The regulation at 8 C.F.R. § 103.2(b)(8)(i) provides for the denial of a petition where

³ We note that item 6(a) includes only two choices: “*am abandoning*” and “*have abandoned*,” and does not include a choice such as “*will or intend to abandon*.” Additionally, according to the *Instructions* to the Form I-407, item 6(c) requires the alien to “list the date the alien *actually abandoned status*” (Emphasis added). The use of the phrases “*am abandoning*,” “*have abandoned*,” and “*actually abandoned*” on the Form I-407 and in its *Instructions* further demonstrates that an alien may not execute a Form I-407 to relinquish LPR status on a date in the future.

the evidence of record demonstrates ineligibility for the requested immigration benefit. Here, the petitioner was an LPR when filing her U nonimmigrant petition, and the Form I-407 that she simultaneously filed was not an actual abandonment of her LPR status. The regulations governing the U nonimmigrant classification at 8 C.F.R. § 214.14 also do not require the issuance of a NOID or RFE prior to denying the petition.

Conclusion

Pursuant to section 214(p)(5) of the Act, an alien seeking U nonimmigrant status may apply for any other immigration benefit or status for which he or she may be eligible. However, USCIS will only grant one immigrant or nonimmigrant status at a time. *See* 72 Fed. Reg. 179, 53014-53042, 53018 (Sept. 17, 2007). As the petitioner was already a lawful permanent resident of the United States at the time she filed her Form I-918 U petition, she was ineligible for U nonimmigrant status. 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak, supra*.

As in all visa petition proceedings, the petitioner bears the burden of proving her eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.